



# FEDERAL REGISTER

VOLUME 24

NUMBER 136

Washington, Tuesday, July 14, 1959

## Title 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

#### PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

##### Department of Labor

Effective upon publication in the FEDERAL REGISTER, subparagraph (8) is added to § 6.313(a) as set out below.

##### § 6.313 Department of Labor.

(a) *Office of the Secretary.* \* \* \*

(8) One Confidential Assistant to the Assistant Secretary.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] WM. C. HULL,  
*Executive Assistant.*

[F.R. Doc. 59-5794; Filed, July 13, 1959; 8:48 a.m.]

## Title 7—AGRICULTURE

### Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

#### PART 730—RICE

##### Subpart—Regulations Pertaining to Rice Marketing Quotas

##### MISCELLANEOUS AMENDMENTS

The purpose of the amendments herein is (1) to change the definition of rice acreage relative to rice produced on a wildlife refuge farm; (2) to permit the issuance of a marketing card to a multiple producer when he has no interest in a farm which is in excess; (3) to extend present language, with respect to issuing marketing certificates to include experimental rice farms; (4) to announce the rate of penalty applicable to the 1959 crop of rice; (5) to clarify present language with respect to a buyer's responsibility for collecting the penalty due on excess stored rice at the time of any unauthorized depletion; (6) to clarify present language with respect to the substitution of excess rice in the case of

licensed storage; (7) to require that acreage in the conservation reserve of the soil bank, be considered rice acreage when determining the amount of excess penalty rice that may be removed from storage; (8) to preclude the use of underplanted allotment on government-owned land under a restrictive lease for removing excess penalty rice from storage; (9) to require that acreage considered rice acreage under a conservation reserve contract, be deemed to have produced the normal production of rice when determining the actual production for the farm; (10) to require that excess rice delivered to the Secretary in satisfaction of the penalty, be clear of all encumbrances; (11) to authorize under certain conditions the issuance of a marketing certificate in lieu of a marketing card to an agricultural experiment station; and (12) to clarify present language regarding the marketing of within quota rice produced on wildlife refuge farms.

The amendment with respect to the definition of rice acreage referred to herein is necessary because of an amendment to Part 719—Reconstitution of Farms, Farm Allotments and Farm History and Soil Bank Base Acreages (23 F.R. 10476). The amendments with respect to marketing cards and marketing certificates, collection of penalty by the buyer upon unauthorized depletion of excess rice in storage, the substitution of excess rice in storage, the requirement that conservation reserve acreage be considered rice acreage when determining the amount of excess penalty rice that may be removed from storage, the preclusion of the use of underplanted allotment on government-owned land under a restrictive lease for removing excess penalty rice from storage, and the requirement that rice delivered to the Secretary be free of all encumbrances are considered necessary to facilitate administration of the marketing quota program. The amendment with respect to the penalty rate is necessary because of the recent announcement of the parity price per pound for rice as of June 15, 1959.

Since farmers have already planted the 1959 crop of rice and soon will be making plans to harvest such crop, it is imperative that they be notified of these amendments as soon as possible. Ac-

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cordingly, it is hereby found that compliance with the notice, procedure, and effective date provisions of the Administrative Procedure Act (5 U.S.C. 1003) is unnecessary and contrary to the public interest, and these amendments shall become effective beginning with the 1959 crop of rice upon publication in the FEDERAL REGISTER.

**§ 730.951 [Amendment]**

1. Section 730.951(v) (definition of rice acreage) is amended to read as follows:

(v) "Rice acreage" means the acreage planted to rice and the acreage of volunteer rice which reaches maturity, excluding (1) any acreage of nonirrigated rice produced on any farm on which such acreage is three acres or less, (2) any acreage of sweet, glutinous, or candy rice commonly known as Mochi Gomi, (3) any acreage of rice grown for experimental purposes only by or under contract to a publicly owned agricultural experiment station, (4) any acreage of rice in excess of the allotment on a wildlife refuge farm consisting solely of Federal or State-owned land: *Provided*, That such acreage is not harvested, but is left on the land for wildlife feed, (5) any acreage planted to rice in excess of the farm rice acreage allotment, or, when applicable, the permitted acreage of rice under a conservation reserve contract under the soil bank program, which is destroyed or otherwise handled or treated (by the producer or from some cause beyond his control) not later than the final date for the disposal of excess acreage as provided in § 730.955(b) of the rice marketing quota regulations for 1958 and subsequent crop years (23 F.R. 2897), and any amendments thereto, so that rice cannot be harvested therefrom, and (6) any acreage seeded to rice outside of the field border levee where such levee is bounded by a fence or other barrier which would make it impossible to harvest or destroy the rice from such area by mechanical means, and any acreage seeded to rice inside of drainage ditch banks where the topography would make it impossible to harvest or destroy the rice from such acreage by mechanical means: *Provided*, That the seeding operations have been performed with an end gate seeder or by airplane.

**§ 730.967 [Amendment]**

2. The third sentence of § 730.967(c) is amended to read as follows: "The other producers on a farm for which the multiple farm producer would otherwise be eligible to receive a marketing card shall be eligible to receive marketing cards with respect to the farm notwith-

standing the ineligibility of the multiple farm producer to receive a marketing card."

**§ 730.968 [Amendment]**

3. Section 730.968(a) is amended to read as follows:

(a) *Producers to whom marketing certificates may be issued.* The county office manager or a member of the county committee shall upon request issue a marketing certificate, Form MQ-94—Rice, to any producer (1) who is eligible to receive a marketing card and who desires to market rice by telegraph, telephone, mail, or by any means or method other than directly to and in the presence of the buyer or transferee; (2) whose liability has been reduced to a proportionate share of the entire penalty and such liability discharged in accordance with the provisions of § 730.975(c); (3) who is ineligible to receive a marketing card solely because of penalties owed by him or by any producer on the farm for excess rice for any preceding crop year; (4) who is ineligible to receive a marketing card solely because of excess rice produced on another farm as provided in § 730.967(c); (5) who is ineligible to receive a marketing card because the farm marketing excess determined under § 730.959 was adjusted under § 730.962; (6) who has eligible rice produced in a prior year but is ineligible to receive a marketing card for the current crop year; (7) who is ineligible to receive a marketing card under § 730.967(e); or (8) who is a responsible executive officer of an agricultural experiment station entitled to market experimental rice only produced in excess of the allotment on an experimental farm.

**§ 730.972 [Amendment]**

4. Section 730.972 is amended by adding at the end thereof the following sentence: "The rate of penalty applicable to the 1959 crop of rice shall be 3.81 cents per pound, which is 65 per centum of the parity price per pound for rice as of June 15, 1959, which is determined to be 5.86 cents per pound."

**§ 730.976 [Amendment]**

5. Section 730.976 is amended by adding a new paragraph (e) as follows:

(e) *Collection by buyer at a sale which depleted stored excess rice.* Any buyer within the United States who purchases rice at a sale which has the effect of depleting stored excess rice, including a sale for storage charges, shall collect the penalty due from the producer under § 730.980(g) and remit the amount of the penalty to the treasurer of the county committee within 15 days after such purchase in the manner provided in § 730.977. Failure to collect from the producer shall not relieve the buyer of his duty to remit the amount of the penalty.

**§ 730.980 [Amendment]**

6a. The second and third sentences of § 730.980(b) are amended to read as follows: "Commingling and substitution of rice shall be permissible in case of licensed storage, but this shall not be construed to permit the substitution of warehouse or elevator receipts deposited

in escrow with the county committee to postpone or avoid payment of penalty under paragraph (c) of this section. In the case of non-licensed storage, excess rice may, with the prior written approval of the county committee, be commingled with stored excess rice from any other year, and any or all stored excess rice may be replaced by rice from any other year produced by the same producer on the same or any other farm, if (1) the county committee gives prior written approval of such replacement; (2) the rice to be used for substitution is in storage; (3) the county committee determines that the rice to be used for substitution is of a quality equal to or better than the excess rice in storage and for which substitution is to be made; and (4) the requirements of this section with respect to furnishing a bond or depositing funds in escrow are complied with."

b. The last sentence of § 730.980(h) is amended to read as follows: "For the purpose of this paragraph the acreage, if any, under a conservation reserve contract will be considered rice acreage and such acreage shall be added to the rice acreage determined for the farm. The acreage considered as rice acreage under a conservation reserve contract shall be the acreage placed in the conservation reserve at the regular rate, not to exceed the amount by which the rice acreage allotment (after release and before reapportionment) for the farm exceeds the rice acreage determined for such farm: *Provided*, That in the event the farm also has one or more other commodity allotments and the acreage placed in the conservation reserve at the regular rate is less than the sum of the amount by which the respective allotment (after release and before reapportionment) exceeds the acreage planted to each allotment crop on the farm, the acreage placed in the conservation reserve at the regular rate shall be prorated and credited to each allotment commodity. If the acreage placed in the conservation reserve at the regular rate is equal to or is in excess of the sum of the amount by which the respective allotment (after release and before reapportionment) exceeds the acreage planted to each allotment crop on the farm, no excess penalty rice may be removed from storage."

c. Section 730.980(h) is further amended by adding at the end thereof new language to read as follows: "A producer shall not be entitled to remove excess rice from storage under this paragraph by underplanting the allotment on government-owned land under a lease restricting the production of rice."

d. Section 730.980(i) is amended by adding at the end thereof new language to read as follows: "For the purpose of this paragraph, any acreage which is considered to be rice acreage under a conservation reserve contract under § 730.980(h) will be deemed to have produced the normal production of rice when determining the actual production for the farm."

**§ 730.981 [Amendment]**

7. Section 730.981 is amended by adding a new paragraph (d) as follows:

(d) *Rice to be unencumbered.* Any rice delivered to the Secretary for the purpose of avoiding the penalty with respect to the farm marketing excess for any farm shall be free and clear of all encumbrances and particularly no rice shall be accepted for such purpose if it is subject to storage charges or liens of any kind. Conveyance of the rice to the Secretary shall be made by the execution and delivery of Form MQ-99-Rice.

§ 730.992 [Amendment]

8. Section 730.992(b) is amended to read as follows:

(b) *Issuing marketing cards or marketing certificates.* The county office manager or a member of the county committee shall, upon written application of a responsible executive officer of any publicly-owned agricultural experiment station to which the exemption referred to in paragraph (a) of this section is applicable, issue a marketing card or a marketing certificate for the experiment station in the manner and subject to the conditions specified in §§ 730.967 to 730.970, inclusive.

9. Section 730.993 is amended to read as follows:

§ 730.993 Rice produced on a wildlife refuge farm.

The penalty shall not apply to any rice produced in excess of the allotment on a wildlife refuge farm consisting solely of Federal or State-owned land: *Provided*, That such acreage is not harvested, but is left on the land for wildlife feed. The exemption from penalty shall be granted by the county office manager upon the written application of the farm operator or responsible executive officer on any such farm, stating that none of the excess rice produced on the farm will be harvested and that such excess will be left on the farm for wildlife feed. For the purpose of marketing within quota rice produced on such farm, a marketing card or marketing certificate may be issued in the same manner and subject to the conditions specified in §§ 730.967 to 730.970, inclusive.

(Sec. 375, 52 Stat. 66, as amended; 7 U.S.C. 1375. Interpret or apply secs. 355, 356, 372, 52 Stat. 62, 65, as amended; 7 U.S.C. 1355, 1356, 1372)

Issued at Washington, D.C., this 9th day of July 1959.

CLARENCE D. PALMBY,  
Associate Administrator,  
Commodity Stabilization Service.

[F.R. Doc. 59-5798; Filed, July 13, 1959;  
8:49 a.m.]

Chapter IX—Agricultural Marketing  
Service (Marketing Agreements and  
Orders), Department of Agriculture  
PART 909—ALMONDS GROWN IN  
CALIFORNIA

Subpart—Administrative Rules and  
Regulations

Notice was published in the FEDERAL REGISTER of June 11, 1959 (24 F.R. 4748), that consideration was being given to

certain administrative rules and regulations. This action was proposed to be taken in accordance with applicable provisions of Marketing Agreement No. 115, as amended, and Order No. 9, as amended (7 CFR Part 909) regulating the handling of almonds grown in California. Said amended marketing agreement and order are effective under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The notice afforded interested persons an opportunity to file data, views, or arguments concerning the proposal. The prescribed time for such filing has expired and no communications have been received.

After consideration of all relevant matters presented, including the proposals in the notice, it is hereby found that the administrative rules and regulations (Subpart—Administrative Rules and Regulations), as hereinafter set forth, will tend to effectuate the declared policy of the act.

*It is, therefore, ordered.* That, the administrative rules and regulations applicable to operations under this part shall, on and after the effective time hereof, be as prescribed in the following Subpart—Administrative Rules and Regulations (§§ 909.450 to 909.481) in lieu of §§ 909.400 to 909.402 which, together with their respective subpart headings, are hereby terminated at the effective time of said Subpart—Administrative Rules and Regulations:

Subpart—Administrative Rules and  
Regulations

§ 909.450 Requirements for surplus  
withheld.

(a) *Exemption from program obligations.* Any handler who, pursuant to § 909.50, intends to dispose of almonds, other than those withheld to meet a surplus obligation, for crushing into oil, producing animal feed, or products in other outlets which the Board finds are noncompetitive with existing normal markets for almonds, may have the kernel weight of such almonds excluded from such handler's receipts and exempted from program obligations to the extent provided in this part if the almonds are so disposed of within 30 days after the close of the current crop year, and he complies with the following measures to assure accountability to the Board:

(1) Notifies the Board of his intention to use or ship such almonds at least 48 hours in advance of so using or loading for shipment, and certifies to the Board and to the Secretary of Agriculture that such almonds were received during such crop year.

(2) Prior to shipment of such almonds, obtains from the receiver thereof and submits to the Board a proposed schedule of processing and a written authorization to permit Board employees to enter the premises and observe the storage and processing or other disposition of such almonds.

(3) Ships directly to the location where disposition is to take place, and upon shipment of such almonds submits to the Board a copy of the sales invoice, a copy of the bill of lading, or in the

absence of a sales arrangement such other instrument acceptable to the Board as shall verify the shipment.

(4) Upon completion of disposition the handler shall submit to the Board ACB Form 8 wherein the user of the almonds certifies to the Board and the Secretary that the almonds have been crushed, fed, or so commingled with other feed products or otherwise processed that they have lost their identity as almonds.

(b) *Containers and identification of surplus withheld.* (1) Almonds withheld as surplus pursuant to § 909.50 shall be packed in the containers used by handlers in sales to the trade, in the field bags used by handlers in receiving almonds from growers, or in bulk storage bins used by handlers in storing almonds and which permit identification, sampling, and segregation from other almonds.

(2) Seals, stamps, or tags shall be used to identify lots of surplus almonds and lots packed in hermetically sealed tins or glass containers may be identified by a stamped or die-cast code mark, or similar means, acceptable to the Board.

(3) No handler shall remove, exchange, or deface any surplus almonds identification of the Board except under supervision of the Board exercised by either the presence of a representative of the Board or specific written authorization.

(4) A lot of almonds which has been withheld and certified as meeting the requirements for surplus pursuant to § 909.51 shall not be commingled with any other lot, except when required or authorized by the Board.

§ 909.452 Inspection and certification  
of almonds for surplus.

(a) *Surplus almonds withheld.* (1) Inspection of almonds shall be limited to any plant, storage facility, or shipping point located in California where facilities acceptable to the inspection agency are available for weighing, sampling, and inspection of almonds.

(2) Except for almonds pledged and stored pursuant to § 909.53(b) as security, all almonds withheld to satisfy a surplus obligation, during any reporting period specified in § 909.472, shall be inspected and certified as surplus by the close of such period.

(3) When almonds are offered for inspection, the handler shall furnish the inspection agency with public weighmaster's certificates of weight or other evidence of weight satisfactory to the Board.

(4) The handler offering almonds for inspection shall furnish necessary labor and pay costs incurred in moving and emptying containers for sampling and weighing and shall also furnish necessary labor for affixing the identification to containers of inspected almonds under direct supervision of the inspector.

(5) The handler shall furnish or cause to be furnished to the Board a copy of each required inspection certificate issued by the inspection agency within 48 hours after issuance, covering each lot of almonds withheld, exported or diverted.

(b) *Salable almonds for subsequent surplus credit.* Almonds not withheld as surplus, but which are intended to be disposed of in surplus outlets and for which the handler intends to subsequently request surplus disposition credit, shall be inspected, certified, and identified in the same manner as surplus, and such almonds shall not be handled in normal markets for almonds unless the identification has been removed under the direction of the Board.

**§ 909.453 Deferment of surplus withholding requirements.**

(a) *Undertaking.* The written undertaking to be delivered pursuant to § 909.53(a) shall be on the form provided by the Board.

(b) *Almonds as security.* (1) When almonds are pledged pursuant to § 909.53(b) as security for such undertaking, the quantity pledged shall be at least the eligible weight as determined pursuant to this paragraph. Such weight of pledged almonds shall be the certified kernel weight if the almonds have been inspected and certified as meeting the requirements for surplus set forth in, or prescribed pursuant to, § 909.51. If the almonds have not been so inspected and certified but the Board determines that they appear to be acceptable for surplus, the eligible weight shall be the Board's estimated kernel weight based on actual weights, public weighmaster certificates, counts of standard containers or field bags, volumetric measure, or average weight of bulk bins: *Provided*, That if counts of standard containers or field bags, average weight of bulk bins or volumetric measure is used, 90 percent of the Board's estimated kernel weight shall be the eligible weight

(2) When volumetric measure is used as a basis for estimating kernel weight of unshelled almonds, the following kernel weight equivalents, by variety, for each cubic foot of unshelled almonds shall be used:

Variety	Pounds
IXL	9.2
Ne Plus	9.4
Nonpareil	12.5
Peerless	8.1
Drake	9.6
Mission	9.8
Others	8.1

(3) If the uninspected almonds pledged as security are subsequently offered in satisfaction of the surplus withholding obligation and, upon inspection, the certified kernel weight thereof is insufficient to satisfy the obligation, the handler shall withhold as surplus an additional quantity of almonds, the certified kernel weight of which is adequate to cover the deficiency.

(c) *Bonds as security.* (1) Prior to August 15 of any crop year the manager of the Board shall notify the handler or handlers whose price lists are to be used in computing the bonding rate pursuant to § 909.53(c). Handlers so notified shall immediately furnish the manager with their then current price lists and shall inform the manager immediately of all subsequent changes thereof.

(2) Within 48 hours from the receipt by the manager of any price list which

affects a change in the bonding rate, the manager shall announce such new bonding rate to all handlers, and the handlers shall adjust the amounts of their bonds accordingly.

(3) In the event that the price lists used in computing the bonding rate do not quote prices for all of the sizes specified in § 909.53(c), the bonding rate shall be computed on the basis of the prices which are quoted and a calculated price for any size not quoted. Such calculated price for the absent size shall be computed by applying its recent differentials to the prices of the sizes quoted unless the manager has knowledge that such differentials do not reflect the current market price, whereupon he shall request from each handler, whose prices are used in the computation, a price indicative of the current market price of the absent size.

**§ 909.455 Interhandler transfers.**

(a) *Transfers of almonds.* Interhandler transfers of almonds pursuant to § 909.55 shall be reported to the Board on ACB Form 7. The report shall be prepared in quadruplicate and shall contain the following information: (1) Date of transfer; (2) the names, addresses, and plant locations of both the transferring and receiving handlers; (3) the number and kind of containers in the lot transferred; (4) the variety of almonds transferred; (5) whether the almonds are shelled or unshelled; (6) the manifest or billing number; and (7) name of handler assuming surplus and assessment obligations on the almonds transferred. ACB Form 7 shall be signed by the transferring handler and one copy (copy D) forwarded to the Board at the time of transfer, two copies (copies A and B) shall be forwarded to the receiving handler at the time of transfer, and one copy (copy C) may be retained by the transferring handler for his records. Within three business days following receipt of the almonds, the receiving handler shall sign and forward one copy (copy A) to the Board and may retain one copy (copy B) for his records.

(b) *Transfers of surplus credit.* Any handler having excess surplus credit or having established with the Board creditable disposition in surplus outlets, pursuant to § 909.467, in excess of his surplus withholding obligation may transfer such excess to another handler. The Board shall give effect to such transfers upon approval of a request for such transfer on ACB Form 11 executed by both handlers and showing the quantity of almonds for which credit is being transferred. Upon receipt of a request for such transfer, the Board shall take action to determine whether the transfer can be approved pursuant to § 909.55, and shall promptly advise both handlers that the transfer is approved or the reason that approval is withheld.

**§ 909.459 Release of surplus.**

When a decrease in the surplus percentage results in a handler having withheld as certified surplus a quantity of almonds in excess of his surplus obligation, and he wishes to have such excess released and restored to his salable quantity pursuant to § 909.59, such

handler shall file a request for such release with the Board on ACB Form 22 prior to the date of the intended release. The handler may make the release upon receipt of a copy of ACB Form 22 on which the Board has indicated its approval of the release and its instructions for removal of identification as surplus.

**§ 909.466 Surplus diversion outlets.**

(a) *Diced, sliced, and slivered almonds.* In addition to the outlets specified in § 909.66(c), diced, sliced, and slivered almonds as defined in this paragraph packed in hermetically sealed tin or glass containers not exceeding a net weight of 8 ounces each are hereby found to be noncompetitive with existing normal markets for almonds and are designated as approved outlets for surplus almonds.

(1) "Diced almonds" means pieces of shelled almonds (raw, roasted, or otherwise prepared, and may include seasoning ingredients) practically all of which will pass through a round opening  $\frac{3}{8}$  inch in diameter.

(2) "Sliced almonds" means thin slices of shelled almonds (raw, roasted, or otherwise prepared, and may include seasoning ingredients) practically none of which is thicker than  $\frac{1}{8}$  inch.

(3) "Silvered almonds" means thin, narrow strips of shelled almonds (raw, roasted, or otherwise prepared, and may include seasoning ingredients) practically all of which will pass through a round opening  $\frac{3}{8}$  inch in diameter.

(b) *Almond butter.* Almond butter as used in § 909.66(c) is hereby defined as a comminuted food product prepared by grinding roasted shelled almonds into a homogenous plastic or semiplastic mass or liquid having practically no particles larger than  $\frac{1}{16}$  inch in any dimension.

**§ 909.467 Disposition in surplus outlets by handlers.**

(a) *Agents of Board.* Beginning with July 1 of any crop year a handler may become an agent of the Board pursuant to § 909.67 for the purpose of disposing of surplus almonds of such crop year either by export or by diversion from domestic normal channels of trade. The applicable agency shall be established upon a handler executing a surplus export agreement (ACB Form 12-A) or surplus diversion agreement (ACB Form 12-B) containing terms and conditions specified by the Board.

(b) *Forms.* Intentions to divert almonds shall be reported to the Board on ACB Form 13, shipments for diversion on ACB Form 14, and consummation of diversion on ACB Form 15. Intentions to export shall be reported on ACB Form 18, shipment into export on ACB Form 19, and consummation of export sale on ACB Form 20. On ACB Forms 14 and 19, the handler shall report whether the shipment is a disposition of surplus almonds withheld in satisfaction of his surplus obligation or a disposition of salable almonds in a surplus outlet pursuant to paragraph (c) of this section.

(c) *Surplus withholding credit.* Credit in satisfaction of a surplus withholding obligation shall not exceed the accrued surplus obligation derived by applying

the surplus percentage to the quantity of almonds received by a handler for his own account during the crop year. Dispositions by agents of the Board in eligible surplus outlets within a crop year in excess of said obligations shall be held to be dispositions of salable almonds. Where such dispositions have met the requirements for surplus pursuant to § 909.51 and have complied with the terms, conditions and documentation applicable to disposition of surplus almonds as determined by the Board, they may be credited against unsatisfied surplus obligations of the agent-handler or may be transferred to apply against the surplus obligation of another handler. Crediting of said transfers shall be subject to Board approval upon its receiving a jointly executed agreement of transfer (ACB Form 11).

#### § 909.471 Record of receipts.

(a) Prior to issuing any receipts for almonds received in any crop year, each handler shall notify the Board of the serial numbers of the receipts he intends to use during such crop year.

(b) Whenever a receipt is spoiled, voided, or used for any purpose other than receiving almonds, the handler shall notify the Board of the number of such receipt or forward a copy of such receipt (marked to indicate it is void) to the Board not later than the next period for reporting receipts.

(c) Whenever almonds for which receipts have been issued are returned to the person from whom received, the handler shall file with the Board a copy of a new receipt setting forth the same information required when receiving almonds and on which is clearly stamped or written the word "credit" across its face.

#### § 909.472 Report of almonds received.

Each handler shall report to the Board on ACB Form 1 the total pounds of almonds, unshelled and shelled, by varieties, received by him for his own account within any of the hereinafter prescribed reporting periods. Each such report shall be filed with the Board within 5 business days after the close of the applicable one of the following reporting period:

July 1 to September 30;  
October 1 to October 15;  
October 16 to October 31;  
November 1 to November 15;  
November 16 to November 30;  
December 1 to December 31;  
January 1 to March 31;  
April 1 to June 30.

#### § 909.473 Redetermination reports.

Each handler shall furnish for use by the Board in redetermination of the kernel weight of almonds received for his own account the information listed and described in this section. Such information shall be reported within the applicable times specified in § 909.73 on forms provided by the Board.

(a) *Handler carryover.* A report of the weight of all almonds by variety, whether unshelled or shelled, wherever located, held by the handler for his own account (whether or not sold), except those held in satisfaction of a surplus

withholding obligation or in the form of almond products.

(b) *Surplus.* A report of all almonds by variety, net weight, and certified kernel weight which are withheld in satisfaction of a surplus obligation and those which have been disposed of in the manner provided in §§ 909.66 through 909.68.

(c) *Delivered sales.* A report of salable almonds sold and delivered, showing the weight, variety, and whether unshelled or shelled, except those disposed of pursuant to the requirements for surplus disposition, or used in almond products.

(d) *Almond products.* A report of all almonds used by the handler in the manufacture of any almond product as defined in § 909.15, showing a description of each such product, the weight of almonds used therein, and the finished weight of such product.

(e) *Transfers.* A report listing each transfer of almonds to another handler showing the weight of each lot transferred, the variety of almonds in the lot, whether unshelled or shelled, the name of the receiving handler, and by whom the assessment and withholding obligations for such almonds were assumed.

(f) *Undelivered sales.* A report of salable almonds sold in domestic normal channels of trade but not delivered, showing the weight of such almonds, the variety, and whether they are shelled or unshelled.

#### § 909.481 Refunds.

Refunds shall be made pursuant to § 909.81(b); however, if any handler fails to pay his full assessment for a crop year, the refunds shall be calculated in such a manner that will preclude any handler paying more than his pro rata share of expenses for such crop year.

It is hereby found that good cause exists for not postponing the effective time hereof later than the time hereinafter set forth (See section 4(c) of the Administrative Procedure Act; 5 U.S.C. 1001 et seq.) in that (1) the 1959-60 crop year began on July 1, 1959, and the administrative rules and regulations herein prescribed are necessary in connection with the handling operations during such crop year; (2) the proposals, on which these administrative rules and regulations are based, were submitted by the Almond Control Board (on which handlers and other members of the almond industry are represented) and, hence, handlers and others have knowledge of, and are familiar with, these rules and regulations of which notice was published in the FEDERAL REGISTER on June 11, 1959 (24 F.R. 4748); and (3) these rules and regulations do not require any special preparation for compliance therewith which cannot be completed by the effective time hereof. With respect to the termination of § 909.401, it is hereby further found that it is impracticable and unnecessary to give preliminary notice and engage in public rule-making procedure because the requirements of said section, with some relaxation thereof, have, in substance, been incorporated into, and superseded by, the provisions of § 909.51 on the basis of the prerequisite

promulgation proceeding leading to the first amendment (21 F.R. 3416, 9569; 22 F.R. 1389, 3781) of the marketing agreement and order regulating the handling of almonds grown in California (7 CFR Part 909), at which time, however, § 909.401 was not expressly terminated. (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated July 9, 1959, to become effective upon publication in the FEDERAL REGISTER.

S. R. SMITH,  
Director,

*Fruit and Vegetable Division.*

[F.R. Doc. 59-5797; Filed, July 13, 1959; 8:49 a.m.]

## Title 13—BUSINESS CREDIT AND ASSISTANCE

### Chapter I—Small Business Administration

[Amdt. 1]

#### PART 121—SMALL BUSINESS SIZE STANDARDS

##### Aircraft Equipment and Parts Industry

On March 13, 1959 notice of proposed rule making regarding the boat building and repairing industry and the aircraft equipment and parts industry was published in the FEDERAL REGISTER (24 F.R. 2090, 2091). The definitions relating to the boat building and repairing industry and the aircraft equipment and parts industry as proposed were not adopted based on consideration of relevant matters presented by interested parties in connection with hearings held by the Administrator on April 16, 1959 and April 23, 1959, respectively.

The definition of small business for the boat building and repairing industry shall remain unchanged, i.e., 500 or less employees.

In lieu of the proposed definition for the aircraft equipment and parts industry the following definition is hereby adopted, to become effective 30 days after publication in the FEDERAL REGISTER.

The Small Business Size Standards Regulation (Revision 1) (24 F.R. 3491) is hereby amended by adding the following new subparagraph 121.3-8(a) (5):

(5) *Aircraft equipment and parts industry.* In connection with the purchase by the Government of the items listed in this paragraph any business concern in the aircraft equipment and parts industry is small if its number of employees does not exceed 1,000 persons:

- (i) Airframes and structural components,
- (ii) Aircraft propellers and hubs,
- (iii) Wheel and brake systems,
- (iv) Jet engines,
- (v) Fuel tanks,
- (vi) Aircraft hydraulic systems,
- (vii) Aircraft vacuum systems,
- (viii) Aircraft air-conditioning,
- (ix) Heating and pressurizing equipment,

- (x) Fire control systems,
- (xi) Flight instruments,
- (xii) Flight simulators (except small cockpit trainers),
- (xiii) Aircraft de-icing systems.

(Pub. Law 85-536, sec. 5, 72 Stat. 385)

Dated: July 6, 1959.

WENDELL B. BARNES,  
Administrator.

[F.R. Doc. 59-5787; Filed, July 13, 1959;  
8:47 a.m.]

## Title 14—AERONAUTICS AND SPACE

### Chapter I—Federal Aviation Agency

[Regulatory Docket 58; Reg. SR-422B]

#### SUBCHAPTER A—CIVIL AIR REGULATIONS

#### PART 4b—AIRPLANE AIRWORTHINESS; TRANSPORT CATEGORIES

#### PART 10—CERTIFICATION AND APPROVAL OF IMPORT AIRCRAFT AND RELATED PRODUCTS

#### PART 40—SCHEDULED INTERSTATE AIR CARRIER CERTIFICATION AND OPERATION RULES

#### PART 41—CERTIFICATION AND OPERATION RULES FOR SCHEDULED AIR CARRIER OPERATIONS OUTSIDE THE CONTINENTAL LIMITS OF THE UNITED STATES

#### PART 42—IRREGULAR AIR CARRIER AND OFF-ROUTE RULES

#### PART 43—GENERAL OPERATION RULES

#### Special Civil Air Regulation; Turbine-Powered Transport Category Airplanes of Current Design

Special Civil Air Regulation No. SR-422, effective August 27, 1957, prescribes requirements applicable to the type certification and operation of turbine-powered transport category airplanes for which a type certificate is issued after August 27, 1957. Special Civil Air Regulation No. SR-422A, effective July 2, 1958, included substantive changes to SR-422 and was made applicable to all turbine-powered transport category airplanes for which a type certificate is issued after September 30, 1958.

This Special Civil Air Regulation makes further changes to the airworthiness rules for turbine-powered transport category airplanes to be applicable to all such airplanes for which a type certificate is issued after August 29, 1959. These changes were proposed in Draft Release No. 58-1C (24 F.R. 128) by the Civil Aeronautics Board in connection with the 1958 Annual Airworthiness Review. The amendments herein have been adopted after careful consideration of all the discussion and comment received thereon.

Substantive and minor changes have been made to the provisions of SR-422A. For ease in identification they are listed as follows:

(a) Substantive changes: introductory paragraphs; 4T.114(b), (c), (d), (e), and (f); 4T.115(d); 4T.117a(b); 4T.120(a) (3), (b), and (d); 40T.81(c); 43T.11(c); and item 5 (a) and (b).

(b) Minor changes; item 2; 4T.112 (title), (b) (1), (c), (d), and (e); 4T.113 (b); 4T.116(i) (4); 4T.117(b) (1) and (2); 4T.120(a); 4T.121; 4T.122(d); 4T.123(a); 40T.82; and 40T.83.

Pertinent background information to this regulation is contained in the preambles to SR-422 and SR-422A. Following is a discussion of important issues relevant to the changed provisions contained herein.

One of the most important changes being introduced concerns the rotation speed  $V_R$  of the airplane during takeoff (4T.114). Experience gained in the certification of airplanes under the provisions of SR-422 and SR-422A indicates that relating  $V_R$  to the stall speed is not essential and might unduly penalize airplanes with superior flying qualities. It has been found that the primary limitations on  $V_R$  should be in terms of a margin between the actual lift-off speeds  $V_{LOF}$  and the minimum unstuck speed  $V_{MU}$  at which the airplane can proceed safely with the takeoff. The provisions contained herein require that  $V_R$  speeds be established to be applicable to takeoffs with one engine inoperative as well as with all engines operating. The  $V_{MU}$  speeds can be established from free air data provided that the data are verified by ground takeoff tests. Certain safeguards are included in conjunction with the establishment of  $V_R$  speeds to ensure that takeoffs in service can be made with consistent safety.

A change is being introduced to the provision in 4T.117a(b) concerning the manner in which the net takeoff flight path is obtained. In accordance with this provision as contained in SR-422A, the net takeoff flight path would have a negative slope throughout the acceleration segment. Since this segment usually represents level flight easily controlled by reference to the normal flight instruments, a significant reduction in the flight path's gradient would not be expected. For these reasons, the provision is being changed to permit an equivalent reduction in acceleration in lieu of a reduction in gradient.

Section 4T.117a(b) is being amended additionally by changing the value of gradient margin in the net flight path for two-engine airplanes from 1.0 percent to 0.8 percent. The value for four-engine airplanes remains 1.0 percent. Differentiation in gradient values in the net flight path between two and four-engine airplanes is consistent with the differentiation in the climb gradients for the takeoff, en route, and approach stages of flight. Statistical analysis substantiates the specific reduction of the net flight path gradient to a value of 0.8 percent. Correlatively, a re-evaluation of the climb gradients for twin-engine airplanes in the second segment takeoff and in the approach climb indicates that the respective values should be 2.4 percent and 2.1 percent, and these changes are being made in 4T.120 (b) and (d).

A change is introduced in the conditions prescribed for meeting the climb

gradient in the first segment takeoff climb (4T.120(a)), by changing the speed  $V_2$  to the speed  $V_{LOR}$ . The intent of this requirement is to use the speed at which the airplane lifts off the ground. In SR-422 this speed was considered to be  $V_2$ ; however, in SR-422A and in this regulation the speed  $V_2$  is a higher speed which is reached at the end of the take-off distance and no longer reflects the conditions pertinent to the first segment climb. In making this change consistent with relevant changes in SR-422A and in this regulation, no consideration has been given to the appropriateness of the minimum climb gradient values prescribed for the first segment climb. These are subject to alteration if results of further studies so indicate.

There is being introduced in this regulation the concept of "stopways," the definition of which is contained in item 5(b). Stopways have been used outside the United States in meeting the accelerate-stop distances in case of aborted takeoffs. They are considered to result in more practical operations. In order to ensure that they can be used without detrimental effects on safety, a provision is being included in 4T.115(d) requiring taking into account the surface characteristics of the stopways to be used in scheduling the accelerate-stop distances in the Airplane Flight Manual.

In conjunction with the introduction of stopways, there are changes being made in the definition of a "clearway" (item 5(a)). One of the changes is to specify that a clearway begins at the end of the runway whether or not a stopway is being used. Of the other changes, the most significant one expresses the clearway in terms of a clearway plane and permits this plane to have an upward slope of 1.25 percent. In effect, this change will allow, in some cases, use of clearways which would not be allowed under the definition in SR-422A because of relatively small obstacles or slightly sloping terrain. (See also 40T.81(c) and 43T.11(c).)

There are also included in this regulation a number of minor, editorial, or clarifying changes.

Draft Release No. 58-1C included a proposal for expanding lateral obstacle clearances in the takeoff flight path. Studies indicate that some expanding lateral clearances are necessary for safety in operations with all turbine-powered airplanes. It appears, therefore, that an appropriate rule should be made applicable not only to airplanes certificated in accordance with this regulation, but also to those certificated in accordance with SR-422 and SR-422A. Accordingly, no change is being made in this regulation to the lateral obstacle clearance provisions, instead, a Notice of Proposed Rule Making is now being prepared to amend SR-422, SR-422A, and this regulation, to require expanding lateral obstacle clearances for all airplanes certificated thereunder.

This Special Civil Air Regulation is not intended to compromise the authority of the Administrator under § 4b.10 to impose such special conditions as are found necessary in any particular case to avoid unsafe design features and otherwise to ensure equivalent safety.

Interested persons have been afforded an opportunity to participate in the making of this regulation (24 F.R. 128), and due consideration has been given to all relevant matter presented.

This regulation does not require compliance until after August 29, 1959; however, since applicants for a type certificate for turbine-powered transport category airplanes may elect to show compliance with this regulation before that date, it is being made effective immediately.

In consideration of the foregoing, the following Special Civil Air Regulation is hereby promulgated to become effective immediately:

Contrary provisions of the Civil Air Regulations notwithstanding, all turbine-powered transport category airplanes for which a type certificate is issued after August 29, 1959, shall comply with the following requirements. Applicants for a type certificate for a turbine-powered transport category airplane may elect and are authorized to meet the requirements of this Special Civil Air Regulation prior to August 29, 1959, in which case however, all of the following provisions must be complied with.

1. The provisions of Part 4b of the Civil Air Regulations, effective on the date of application for type certificate; and such of the provisions of all subsequent amendments to Part 4b, in effect prior to August 27, 1957, as the Administrator finds necessary to ensure that the level of safety of turbine-powered airplanes is equivalent to that generally intended by Part 4b.

2. In lieu of §§ 4b.110 through 4b.125, 4b.133, and 4b.743 of Part 4b of the Civil Air Regulations, the following shall be applicable:

#### PERFORMANCE

4T.110 *General.* (a) The performance of the airplane shall be determined and scheduled in accordance with, and shall meet the minima prescribed by, the provisions of §§ 4T.110 through 4T.123. The performance limitations, information, and other data shall be given in accordance with § 4T.743.

(b) Unless otherwise specifically prescribed, the performance shall correspond with ambient atmospheric conditions and still air. Humidity shall be accounted for as specified in paragraph (c) of this section.

(c) The performance as affected by engine power and/or thrust shall be based on a relative humidity of 80 percent at and below standard temperatures and on 34 percent at and above standard temperatures plus 50° F. Between these two temperatures the relative humidity shall vary linearly.

(d) The performance shall correspond with the propulsive thrust available under the particular ambient atmospheric conditions, the particular flight condition, and the relative humidity specified in paragraph (c) of this section. The available propulsive thrust shall correspond with engine power and/or thrust not exceeding the approved power and/or thrust less the installation losses and less the power and/or equivalent thrust absorbed by the accessories and services appropriate to the particular ambient atmospheric conditions and the particular flight condition.

4T.111 *Airplane configuration, speed, power, and/or thrust; general.* (a) The airplane configuration (setting of wing and cowl flaps, air brakes, landing gear, propeller, etc.), denoted respectively as the takeoff, en route, approach, and landing configurations, shall be selected by the applicant except as otherwise prescribed.

(b) It shall be acceptable to make the airplane configurations variable with weight, attitude, and temperature, to an extent found

by the Administrator to be compatible with operating procedures required in accordance with paragraph (c) of this section.

(c) In determining the accelerate-stop distances, takeoff flight paths, takeoff distances, and landing distances, changes in the airplane's configuration and speed, and in the power and/or thrust shall be in accordance with procedures established by the applicant for the operation of the airplane in service, except as otherwise prescribed. In addition, procedures shall be established for the execution of balked landings and missed approaches associated with the conditions prescribed in §§ 4T.119 and 4T.120(d), respectively. All procedures shall comply with the provisions of subparagraphs (1) through (3) of this paragraph.

(1) The Administrator shall find that the procedures can be consistently executed in service by crews of average skill.

(2) The procedures shall not involve methods or the use of devices which have not been proven to be safe and reliable.

(3) Allowance shall be made for such time delays in the execution of the procedures as may be reasonably expected to occur during service.

4T.112 *Stalling and minimum control speeds.* (a) The speed  $V_s$  shall denote the calibrated stalling speed, or the minimum steady flight speed at which the airplane is controllable, in knots, with:

(1) Zero thrust at the stalling speed, or engines idling and throttles closed if it is shown that the resultant thrust has no appreciable effect on the stalling speed;

(2) If applicable, propeller pitch controls in the position necessary for compliance with subparagraph (1) of this paragraph; the airplane in all other respects (flaps, landing gear, etc.) in the particular configuration corresponding with that in connection with which  $V_s$  is being used;

(3) The weight of the airplane equal to the weight in connection with which  $V_s$  is being used to determine compliance with a particular requirement;

(4) The center of gravity in the most unfavorable position within the allowable range.

(b) The stall speed defined in this section shall be the minimum speed obtained in flight tests conducted in accordance with the procedure of subparagraphs (1) and (2) of this paragraph.

(1) With the airplane trimmed for straight flight at a speed chosen by the applicant, but not less than 1.2  $V_s$  nor greater than 1.4  $V_s$ , and from a speed sufficiently above the stalling speed to ensure steady conditions, the elevator control shall be applied at a rate such that the airplane speed reduction does not exceed 1 knot per second.

(2) During the test prescribed in subparagraph (1) of this paragraph, the flight characteristics provisions of § 4b.160 of Part 4b of the Civil Air Regulations shall be complied with.

(c) The minimum control speed  $V_{MC}$ , in terms of calibrated air speed, shall be determined under the conditions specified in this paragraph so that, when the critical engine is suddenly made inoperative at that speed, it is possible to recover control of the airplane with the engine still inoperative and to maintain it in straight flight at that speed, either with zero yaw or, at the option of the applicant, with an angle of bank not in excess of 5 degrees.  $V_{MC}$  shall not exceed 1.2  $V_s$  with:

(1) Engines operating at the maximum available takeoff thrust and/or power;

(2) Maximum sea level takeoff weight or such lesser weight as might be necessary to demonstrate  $V_{MC}$ ;

(3) The airplane in the most critical takeoff configuration existing along the flight path after the airplane becomes airborne, except that the landing gear is retracted;

(4) The airplane trimmed for takeoff;

(5) The airplane airborne and the ground effect negligible;

(6) The center of gravity in the most unfavorable position;

(d) In demonstrating the minimum speed specified in paragraph (c) of this section, the rudder force required to maintain control shall not exceed 180 pounds and it shall not be necessary to reduce the power and/or thrust of the operative engine(s).

(e) During recovery from the maneuver specified in paragraph (c) of this section, the airplane shall not assume any dangerous attitude, nor shall it require exceptional skill, strength, or alertness on the part of the pilot to prevent a change of heading in excess of 20 degrees before recovery is complete.

4T.113 *Takeoff; general.* (a) The takeoff data in §§ 4T.114 through 4T.117 shall be determined under the conditions of subparagraphs (1) and (2) of this paragraph.

(1) At all weights, altitudes, and ambient temperatures, within the operational limits established by the applicant for the airplane.

(2) In the configuration for takeoff (see § 4T.111).

(b) Takeoff data shall be based on a smooth, dry, hard-surfaced runway and shall be determined in such a manner that reproduction of the performance does not require exceptional skill or alertness on the part of the pilot. In the case of seaplanes or float planes, the takeoff surface shall be smooth water, while for skiplane it shall be smooth, dry snow. In addition, the takeoff data shall include operational correction factors in accordance with subparagraphs (1) and (2) of this paragraph for wind and for runway gradients, within the operational limits established by the applicant for the airplane.

(1) Not more than 50 percent of nominal wind components along the takeoff path opposite to the direction of takeoff, and not less than 150 percent of nominal wind components along the takeoff path in the direction of takeoff.

(2) Effective runway gradients.

4T.114 *Takeoff speeds.* (a) The critical-engine-failure speed  $V_1$ , in terms of calibrated air speed, shall be selected by the applicant, but shall not be less than the minimum speed at which controllability by primary aerodynamic controls alone is demonstrated during the takeoff run to be adequate to permit proceeding safely with the takeoff using average piloting skill, when the critical engine is suddenly made inoperative.

(b) The minimum takeoff safety speed  $V_{2min}$ , in terms of calibrated air speed, shall not be less than:

(1) 1.2  $V_s$  for two-engine propeller-driven airplanes and for airplanes without propellers which have no provisions for obtaining a significant reduction in the one-engine-inoperative power-on stalling speed;

(2) 1.15  $V_s$  for propeller-driven airplanes having more than two engines and for airplanes without propellers which have provisions for obtaining a significant reduction in the one-engine-inoperative power-on stalling speed;

(3) 1.10 times the minimum control speed  $V_{MC}$ ;

(c) The takeoff safety speed  $V_2$ , in terms of calibrated air speed, shall be selected by the applicant so as to permit the gradient of climb required in § 4T.120(b), but it shall not be less than:

(1) The speed  $V_{2min}$ ;

(2) The rotation speed  $V_R$  (see paragraph (e) of this section) plus the increment in speed attained prior to reaching a height of 35 feet above the takeoff surface in compliance with § 4T.116(e).

(d) The minimum unstick speed  $V_{MU}$ , in terms of calibrated air speed, shall be the speed at and above which the airplane can be made to lift off the ground and to continue the takeoff without displaying any hazardous characteristics.  $V_{MU}$  speeds shall

be selected by the applicant for the all-engines-operating and the one-engine-inoperative conditions. It shall be acceptable to establish the  $V_{MU}$  speeds from free air data: *Provided*, That these data are verified by ground takeoff tests.

NOTE: In certain cases, ground takeoff tests might involve some takeoffs at the  $V_{MU}$  speeds.

(e) The rotation speed  $V_R$ , in terms of calibrated air speed, shall be selected by the applicant in compliance with the conditions of subparagraphs (1) through (4) of this paragraph.

(1) The  $V_R$  speed shall not be less than:

- (i) The speed  $V_1$ ;
- (ii) A speed equal to 105 percent of  $V_{MC}$ ;
- (iii) A speed which permits the attainment of the speed  $V_2$  prior to reaching a height of 35 feet above the takeoff surface as determined in accordance with § 4T.116(e);
- (iv) A speed which, if the airplane is rotated at its maximum practicable rate, will result in a lift-off speed  $V_{LOF}$  (see paragraph (f) of this section) not less than 110 percent of  $V_{MU}$  in the all-engines-operating condition nor less than 105 percent of  $V_{MU}$  in the one-engine-inoperative condition.

(2) For any given set of conditions (weight, configuration, temperature, etc.), a single value of  $V_R$  speed obtained in accordance with this paragraph shall be used in showing compliance with both the one-engine-inoperative and the all-engines-operating takeoff provisions.

(3) It shall be shown that the one-engine-inoperative takeoff distance determined with a rotation speed 5 knots less than the  $V_R$  speed established in accordance with subparagraphs (1) and (2) of this paragraph does not exceed the corresponding one-engine-inoperative takeoff distance determined with the established  $V_R$  speed. The determination of the takeoff distances shall be in accordance with § 4T.117(a)(1).

(4) It shall be demonstrated that reasonably expected variations in service from the takeoff procedures established by the applicant for the operation of the airplane (see § 4T.111(c)) (e.g. over-rotation of the airplane, out of trim conditions), will not result in unsafe flight characteristics nor in marked increases in the scheduled takeoff distances established in accordance with § 4T.117(a).

(f) The lift-off speed  $V_{LOF}$ , in terms of calibrated air speed, shall be the speed at which the airplane first becomes airborne.

4T.115 *Accelerate-stop distance.* (a) The accelerate-stop distance shall be the sum of the following:

(1) The distance required to accelerate the airplane from a standing start to the speed  $V_1$ ;

(2) Assuming the critical engine to fail at the speed  $V_1$ , the distance required to bring the airplane to a full stop from the point corresponding with the speed  $V_1$ .

(b) In addition to, or in lieu of, wheel brakes, the use of other braking means shall be acceptable in determining the accelerate-stop distance, provided that such braking means shall have been proven to be safe and reliable, that the manner of their employment is such that consistent results can be expected in service, and that exceptional skill is not required to control the airplane.

(c) The landing gear shall remain extended throughout the accelerate-stop distance.

(d) If the accelerate-stop distance is intended to include a stopway with surface characteristics substantially different from those of a smooth hard-surfaced runway, the takeoff data shall include operational correction factors for the accelerate-stop distance to account for the particular surface characteristics of the stopway and the variations in such characteristics with seasonal weather conditions (i.e., temperature, rain,

snow, ice, etc.), within the operational limits established by the applicant.

4T.116 *Takeoff path.* The takeoff path shall be considered to extend from the standing start to a point in the takeoff where a height of 1,500 feet above the takeoff surface is reached or to a point in the takeoff where the transition from the takeoff to the en route configuration is completed and a speed is reached at which compliance with § 4T.120 (c) is shown, whichever point is at a higher altitude. The conditions of paragraphs (a) through (i) of this section shall apply in determining the takeoff path.

(a) The takeoff path shall be based upon procedures prescribed in accordance with § 4T.111(c).

(b) The airplane shall be accelerated on the ground to the speed  $V_1$  at which point the critical engine shall be made inoperative and shall remain inoperative during the remainder of the takeoff. Subsequent to attaining speed  $V_1$ , the airplane shall be accelerated to speed  $V_2$  during which time it shall be permissible to initiate raising the nose gear off the ground at a speed not less than the rotation speed  $V_R$ .

(c) Landing gear retraction shall not be initiated until the airplane becomes airborne.

(d) The slope of the airborne portion of the takeoff path shall be positive at all points.

(e) The airplane shall attain the speed  $V_2$  prior to reaching a height of 35 feet above the takeoff surface and shall continue at a speed as close as practical to, but not less than,  $V_2$  until a height of 400 feet above the takeoff surface is reached.

(f) Except for gear retraction and propeller feathering, the airplane configuration shall not be changed before reaching a height of 400 feet above the takeoff surface.

(g) At all points along the takeoff path starting at the point where the airplane first reaches a height of 400 feet above the takeoff surface, the available gradient of climb shall not be less than 1.2 percent for two-engine airplanes, and 1.7 percent for four-engine airplanes.

(h) The takeoff path shall be determined either by a continuous demonstrated takeoff, or alternatively, by synthesizing from segments the complete takeoff path.

(i) If the takeoff path is determined by the segmental method, the provisions of subparagraphs (1) through (4) of this paragraph shall be specifically applicable.

(1) The segments of a segmental takeoff path shall be clearly defined and shall be related to the distinct changes in the configuration of the airplane, in power and/or thrust, and in speed.

(2) The weight of the airplane, the configuration, and the power and/or thrust shall be constant throughout each segment and shall correspond with the most critical condition prevailing in the particular segment.

(3) The segmental flight path shall be based on the airplane's performance without ground effect.

(4) Segmental takeoff path data shall be checked by continuous demonstrated takeoffs up to the point where the airplane's performance is out of ground effect and the airplane's speed is stabilized, to ensure that the segmental path is conservative relative to the continuous path.

NOTE: The airplane usually is considered out of ground effect when it reaches a height above the ground equal to the airplane's wing span.

4T.117 *Takeoff distance and takeoff run.* (a) *Takeoff distance.* The takeoff distance shall be the greater of the distances established in accordance with subparagraphs (1) and (2) of this paragraph.

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point where the airplane attains a height of 35 feet above the takeoff surface, as determined in accordance with § 4T.116.

(2) A distance equal to 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to the point where the airplane attains a height of 35 feet above the takeoff surface, as determined by a procedure consistent with that established in accordance with § 4T.116.

(b) *Takeoff run.* If the takeoff distance is intended to include a clearway (see item 5 of this regulation), the takeoff run shall be determined and shall be the greater of the distances established in accordance with subparagraphs (1) and (2) of this paragraph.

(i) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point where the speed  $V_{LOF}$  is reached and the point where the airplane attains a height of 35 feet above the takeoff surface, as determined in accordance with § 4T.116.

(2) A distance equal to 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point where the speed  $V_{LOF}$  is reached and the point where the airplane attains a height of 35 feet above the takeoff surface, as determined by a procedure consistent with that established in accordance with § 4T.116.

4T.117a *Takeoff flight path.* (a) The takeoff flight path shall be considered to begin at a height of 35 feet above the takeoff surface at the end of the takeoff distance as determined in accordance with § 4T.117(a).

(b) The net takeoff flight path data shall be determined in such a manner that they represent the airplane's actual takeoff flight paths, determined in accordance with § 4T.116 and, with paragraph (a) of this section, reduced at each point by a gradient of climb equal to 0.8 percent for two-engine airplanes and equal to 1.0 percent for four-engine airplanes. It shall be acceptable to apply the prescribed reduction in climb gradient as an equivalent reduction in the airplane's acceleration along that portion of the actual takeoff flight path where the airplane is accelerated in level flight.

4T.118 *Climb, general.* Compliance shall be shown with the climb requirements of §§ 4T.119 and 4T.120 at all weights, altitudes, and ambient temperatures, within the operational limits established by the applicant for the airplane. The airplane's center of gravity shall be in the most unfavorable position corresponding with the applicable configuration.

4T.119 *All-engine-operating landing climb.* In the landing configuration the steady gradient of climb shall not be less than 3.2 percent, with:

(a) All engines operating at the power and/or thrust which are available 8 seconds after initiation of movement of the power and/or thrust controls from the minimum flight idle to the takeoff position;

(b) A climb speed not in excess of 1.3  $V_2$ .

4T.120 *One-engine-inoperative climb.* (a) *Takeoff; landing gear extended.* In the critical takeoff configuration existing along the flight path between the points where the airplane reaches the speed  $V_{LOF}$  and where the landing gear is fully retracted, in accordance with § 4T.116 but without ground effect, the steady gradient of climb shall be positive for two-engine airplanes and shall not be less than 0.5 percent for four-engine airplanes, with:

(1) The critical engine inoperative, the remaining engine(s) operating at the available takeoff power and/or thrust existing in accordance with § 4T.116 at the time retraction of the airplane's landing gear is initiated, unless subsequently a more critical power operating condition exists along the flight path prior to the point where the landing gear is fully retracted;

(2) The weight equal to the airplane's weight existing in accordance with § 4T.116

at the time retraction of the airplane's landing gear is initiated;

(3) The speed equal to the speed  $V_{LOF}$ .

(b) *Takeoff; landing gear retracted.* In the takeoff configuration existing at the point of the flight path where the airplane's landing gear is fully retracted, in accordance with § 4T.116 but without ground effect, the steady gradient of climb shall not be less than 2.4 percent for two-engine airplanes and not less than 3.0 percent for four-engine airplanes, with:

(1) The critical engine inoperative, the remaining engine(s) operating at the available takeoff power and/or thrust existing in accordance with § 4T.116 at the time the landing gear is fully retracted, unless subsequently a more critical power operating condition exists along the flight path prior to the point where a height of 400 feet above the takeoff surface is reached;

(2) The weight equal to the airplane's weight existing in accordance with § 4T.116 at the time the airplane's landing gear is fully retracted;

(3) The speed equal to the speed  $V_2$ .

(c) *Final takeoff.* In the en route configuration, the steady gradient of climb shall not be less than 1.2 percent for two-engine airplanes and not less than 1.7 percent for four-engine airplanes, at the end of the takeoff path as determined by § 4T.116, with:

(1) The critical engine inoperative, the remaining engine(s) operating at the available maximum continuous power and/or thrust;

(2) The weight equal to the airplane's weight existing in accordance with § 4T.116 at the end of the takeoff path.

(3) The speed equal to not less than  $1.25 V_S$ .

(d) *Approach.* In the approach configuration corresponding with the normal all-engines-operating procedure such that  $V_S$  related to this configuration does not exceed 110 percent of the  $V_S$  corresponding with the related landing configuration, the steady gradient of climb shall not be less than 2.1 percent for two-engine airplanes and not less than 2.7 percent for four-engine airplanes with:

(1) The critical engine inoperative, the remaining engine(s) operating at the available takeoff power and/or thrust;

(2) The weight equal to the maximum landing weight;

(3) A climb speed established by the applicant in connection with normal landing procedures, except that it shall not exceed  $1.5 V_2$  (see § 4T.111(c)).

4T.121 *En route flight paths.* With the airplane in the en route configuration, the flight paths prescribed in paragraphs (a) and (b) of this section shall be determined at all weights, altitudes, and ambient temperatures, within the operational limits established by the applicant for the airplane.

(a) *One engine inoperative.* The one-engine-inoperative net flight path data shall be determined in such a manner that they represent the airplane's actual climb performance diminished by a gradient of climb equal to 1.1 percent for two-engine airplanes and 1.6 percent for four-engine airplanes. It shall be acceptable to include in these data the variation of the airplane's weight along the flight path to take into account the progressive consumption of fuel and oil by the operating engine(s).

(b) *Two engines inoperative.* For airplanes with four engines, the two-engine-inoperative net flight path data shall be determined in such a manner that they represent the airplane's actual climb performance diminished by a gradient of climb equal to 0.5 percent. It shall be acceptable to include in these data the variation of the airplane's weight along the flight path to take into account the progressive consumption of fuel and oil by the operating engines.

(c) *Conditions.* In determining the flight paths prescribed in paragraphs (a) and (b) of this section, the conditions of subparagraphs (1) through (4) of this paragraph shall apply.

(1) The airplane's center of gravity shall be in the most unfavorable position.

(2) The critical engine(s) shall be inoperative, the remaining engine(s) operating at the available maximum continuous power and/or thrust.

(3) Means for controlling the engine cooling air supply shall be in the position which provides adequate cooling in the hot-day condition.

(4) The speed shall be selected by the applicant.

4T.122 *Landing distance.* The landing distance shall be the horizontal distance required to land and to come to a complete stop (to a speed of approximately 3 knots in the case of seaplanes or float planes) from a point at a height of 50 feet above the landing surface. Landing distances shall be determined for standard temperatures at all weights, altitudes, and winds, within the operational limits established by the applicant for the airplane. The conditions of paragraphs (a) through (g) of this section shall apply.

(a) The airplane shall be in the landing configuration. During the landing, changes in the airplane's configuration, in power and/or thrust, and in speed shall be in accordance with procedures established by the applicant for the operation of the airplane in service. The procedures shall comply with the provisions of § 4T.111(c).

(b) The landing shall be preceded by a steady gliding approach down to the 50-foot height with a calibrated air speed of not less than  $1.3 V_S$ .

(c) The landing distance shall be based on a smooth, dry, hard-surfaced runway, and shall be determined in such a manner that reproduction does not require exceptional skill or alertness on the part of the pilot. In the case of seaplanes or float planes, the landing surface shall be smooth water, while for skiplanes it shall be smooth, dry snow. During landing, the airplane shall not exhibit excessive vertical acceleration, a tendency to bounce, nose over, ground loop, porpoise, or water loop.

(d) The landing distance data shall include operational correction factors for not more than 50 percent of nominal wind components along the landing path opposite to the direction of landing and not less than 150 percent of nominal wind components along the landing path in the direction of landing.

(e) During landing, the operating pressures on the wheel braking system shall not be in excess of those approved by the manufacturer of the brakes, and the wheel brakes shall not be used in such a manner as to produce excessive wear of brakes and tires.

(f) In addition to, or in lieu of, wheel brakes, the use of other braking means shall be acceptable in determining the landing distance, provided such braking means shall have been proven to be safe and reliable, that the manner of their employment is such that consistent results can be expected in service, and that exceptional skill is not required to control the airplane.

(g) If the characteristics of a device (e.g., the propellers) dependent upon the operation of any of the engines noticeably increase the landing distance when the landing is made with the engine inoperative, the landing distance shall be determined with the critical engine inoperative unless the Administrator finds that the use of compensating means will result in a landing distance not greater than that attained with all engines operating.

4T.123 *Limitations and information.* (a) *Limitations.* The performance limitations on the operation of the airplane shall be estab-

lished in accordance with subparagraph (1) through (4) of this paragraph. (See also § 4T.743.)

(1) *Takeoff weights.* The maximum takeoff weights shall be established at which compliance is shown with the generally applicable provisions of this regulation and with the takeoff climb provisions prescribed in § 4T.120 (a), (b), and (c) for altitudes and ambient temperatures, within the operational limits of the airplane (see subparagraph (4) of this paragraph).

(2) *Landing weights.* The maximum landing weights shall be established at which compliance is shown with the generally applicable provisions of this regulation and with the landing and takeoff climb provisions prescribed in §§ 4T.119 and 4T.120 for altitudes and ambient temperatures, within the operational limits of the airplane (see subparagraph (4) of this paragraph).

(3) *Accelerate-stop distance, takeoff distance, and takeoff run.* The minimum distances required for takeoff shall be established at which compliance is shown with the generally applicable provisions of this regulation and with §§ 4T.115 and 4T.117(a), and with 4T.117(b) if the takeoff distance is intended to include a clearway, for weights, altitudes, temperatures, wind components, and runway gradients, within the operational limits of the airplane (see subparagraph (4) of this paragraph).

(4) *Operational limits.* The operational limits of the airplane shall be established by the applicant for all variable factors required in showing compliance with this regulation (weight, altitude, temperature, etc.). (See §§ 4T.113 (a)(1) and (b), 4T.115(d), 4T.118, 4T.121, and 4T.122.)

(b) *Information.* The performance information on the operation of the airplane shall be scheduled in compliance with the generally applicable provisions of this regulation and with §§ 4T.117a(b), 4T.121, and 4T.122 for weights, altitudes, temperatures, wind components, and runway gradients, as these may be applicable, within the operational limits of the airplane (see subparagraph (a)(4) of this section). In addition, the performance information specified in subparagraphs (1) through (3) of this paragraph shall be determined by extrapolation and scheduled for the ranges of weights between the maximum landing and maximum takeoff weights established in accordance with subparagraphs (a)(1) and (a)(2) of this section. (See also § 4T.743.)

(1) Climb in the landing configuration (see § 4T.119);

(2) Climb in the approach configuration (see § 4T.120(d));

(3) Landing distance (see § 4T.122).

#### AIRPLANE FLIGHT MANUAL

4T.743 *Performance limitations, information, and other data.*—(a) *Limitations.* The airplane's performance limitations shall be given in accordance with § 4T.123(a).

(b) *Information.* The performance information prescribed in § 4T.123(b) for the application of the operating rules of this regulation shall be given together with descriptions of the conditions, air speeds, etc., under which the data were determined.

(c) *Procedures.* Procedures established in accordance with § 4T.111(c) shall be given to the extent such procedures are related to the limitations and information set forth in accordance with paragraphs (a) and (b) of this section. Such procedures, in the form of guidance material, shall be included with the relevant limitations or information, as applicable.

(d) *Miscellaneous.* An explanation shall be given of significant or unusual flight or ground handling characteristics of the airplane.

3. In lieu of §§ 40.70 through 40.78, 41.27 through 41.36(d), and 42.70 through 42.83, of Parts 40, 41, and 42, respectively, of the

Civil Air Regulations, the following shall be applicable:

#### OPERATING RULES

**40T.80 Transport category airplane operating limitations.** (a) In operating any passenger-carrying transport category airplane certificated in accordance with the performance requirements of this regulation, the provisions of §§ 40T.80 through 40T.84 shall be complied with, unless deviations therefrom are specifically authorized by the Administrator on the ground that the special circumstances of a particular case make a literal observance of the requirements unnecessary for safety.

(b) The performance data in the Airplane Flight Manual shall be applied in determining compliance with the provisions of §§ 40T.81 through 40T.84. Where conditions differ from those for which specific tests were made, compliance shall be determined by approved interpolation or computation of the effects of changes in the specific variables if such interpolations or computations give results substantially equalling in accuracy the results of a direct test.

**40T.81 Airplane's certificate limitations.** (a) No airplane shall be taken off at a weight which exceeds the takeoff weight specified in the Airplane Flight Manual for the elevation of the airport and for the ambient temperature existing at the time of the takeoff. (See §§ 4T.123(a)(1) and 4T.743(a).)

(b) No airplane shall be taken off at a weight such that, allowing for normal consumption of fuel and oil in flight to the airport of destination and to the alternate airports, the weight on arrival will exceed the landing weight specified in the Airplane Flight Manual for the before reaching a height of 50 feet as shown by the net takeoff flight path data in the Airplane Flight Manual, and that a maximum bank thereafter does not exceed 15 degrees. The net takeoff flight path considered shall be for the elevation of the airport, the effective runway gradient, and for the ambient temperature and wind component existing at the time of takeoff. (See §§ 4T.123(b) and 4T.743(b).)

**40T.83 En route limitations.** All airplanes shall be operated in compliance with paragraph (a) of this section. In addition, no airplane shall be flown along an intended route if any place along the route is more than 90 minutes away from an airport at which a landing can be made in accordance with § 40T.84(b), assuming all engines to be operating at cruising power, unless compliance is shown with paragraph (b) of this section.

(a) **One engine inoperative.** No airplane shall be taken off at a weight in excess of that which, according to the one-engine-inoperative en route net flight path data shown in the Airplane Flight Manual, will permit compliance with either subparagraphs (1) or (2) of this paragraph at all points along the route. The net flight path shall have a positive slope at 1,500 feet above the airport where the landing is assumed to be made after the engine fails. The net flight path used shall be for the ambient temperatures anticipated along the route. (See §§ 4T.123(b) and 4T.743(b).)

(1) The slope of the net flight path shall be positive at an altitude of at least 1,000 feet above all terrain and obstructions along the route within 5 statute miles (4.34 nautical miles) on either side of the intended track.

(2) The net flight path shall be such as to permit the airplane to continue flight from the cruising altitude to an airport where a landing can be made in accordance with the provisions of § 40T.84(b), the net flight path clearing vertically by at least 2,000 feet all terrain and obstructions along the route within 5 statute miles (4.34 nautical miles) on either side of the intended track. The provisions of subdivisions (1)

through (vi) of this subparagraph shall apply.

(i) The engine shall be assumed to fail at the most critical point along the route.

(ii) The airplane shall be assumed to pass over the critical obstruction following engine failure at a point no closer to the critical obstruction than the nearest approved radio navigational fix, except that the Administrator may authorize a procedure established on a different basis where adequate operational safeguards are found to exist.

(iii) An approved method shall be used to account for winds which would otherwise adversely affect the flight path.

(iv) Fuel jettisoning shall be permitted if the Administrator finds that the operator has an adequate training program, proper instructions are given to the flight crew, and all other precautions are taken to ensure a safe procedure.

(v) The alternate airport shall be specified in the dispatch release and shall meet the prescribed weather minima.

(vi) The consumption of fuel and oil after the engine is assumed to fail shall be that which is accounted for in the net flight path data shown in the Airplane Flight Manual.

(b) **Two engines inoperative.** No airplane shall be taken off at a weight in excess of that which, according to the two-engine-inoperative en route net flight path data shown in the Airplane Flight Manual, will permit the airplane to continue flight from the point where two engines are assumed to fail simultaneously to an airport where a landing can be made in accordance with the provisions of § 40T.84(b), the net flight path clearing vertically by at least 2,000 feet all terrain and obstructions along the route within 5 statute miles (4.34 nautical miles) on either side of the intended track. The net flight path considered shall be for the ambient temperatures anticipated along the route. The provisions of subparagraphs (1) through (5) of this paragraph shall apply. (See §§ 4T.123(b) and 4T.743(b).)

(1) The two engines shall be assumed to fail at the most critical point along the route.

(2) The net flight path shall have a positive slope at 1,500 feet above the airport where the landing is assumed to be made after failure of two engines.

(3) Fuel jettisoning shall be permitted if the Administrator finds that the operator has an adequate training program, proper instructions are given to the flight crew, and all other precautions are taken to ensure a safe procedure.

(4) The airplane's weight at the point where the two engines are assumed to fail shall be considered to be not less than that which would include sufficient fuel to proceed to the airport and to arrive there at an altitude of at least 1,500 feet directly over the landing area and thereafter to fly for 15 minutes at cruise power and/or thrust.

(5) The consumption of fuel and oil after the engines are assumed to fail shall be that which is accounted for in the net flight path data shown in the Airplane Flight Manual.

**40T.84 Landing limitations—(a) Airport of destination.** No airplane shall be taken off at a weight in excess of that which, in accordance with the landing distances shown in the Airplane Flight Manual for the elevation of the airport of intended destination and for the wind conditions anticipated there at the time of landing, would permit the airplane to be brought to rest at the airport of intended destination within 60 percent of the effective length of the runway from a point 50 feet directly above the intersection of the obstruction clearance plane and the runway. The weight of the airplane shall be assumed to be reduced by the weight of the fuel and oil expected to be consumed in flight to the airport of intended destination. Compliance shall be shown with the conditions of subparagraphs (1) and (2) of

this paragraph. (See §§ 4T.123(b) and 4T.743(b).)

(1) It shall be assumed that the airplane is landed on the most favorable runway and direction in still air.

(2) It shall be assumed that the airplane is landed on the most suitable runway considering the probable wind velocity and direction and taking due account of the ground handling characteristics of the airplane and of other conditions (i.e., landing aids, terrain, etc.) If full compliance with the provisions of this subparagraph is not shown, the airplane may be taken off if an alternate airport is designated which permits compliance with paragraph (b) of this section.

(b) **Alternate airport.** No airport shall be designated as an alternate airport in a dispatch release unless the airplane at the weight anticipated at the time of arrival at such airport can comply with the provisions of paragraph (a) of this section, provided that the airplane can be brought to rest within 70 percent of the effective length of the runway.

4. In lieu of § 43.11 of Part 43 of the Civil Air Regulations, the following shall be applicable.

**43T.11 Transport category airplane weight limitations.** The performance data in the Airplane Flight Manual shall be applied in determining compliance with the following provisions:

(a) No airplane shall be taken off at a weight which exceeds the takeoff weight specified in the Airplane Flight Manual for the elevation of the airport and for the ambient temperature existing at the time of the takeoff. (See §§ 4T.123(a)(1) and 4T.743(a).)

(b) No airplane shall be taken off at a weight such that, allowing for normal consumption of fuel and oil in flight to the airport of destination and to the alternate airports, the weight on arrival will exceed the landing weight specified in the Airplane Flight Manual for the elevation of each of the airports involved and for the ambient temperatures anticipated at the time of landing. (See §§ 4T.123(a)(2) and 4T.743(a).)

(c) No airplane shall be taken off at a weight which exceeds the weight at which, in accordance with the minimum distances for takeoff scheduled in the Airplane Flight Manual, compliance with subparagraphs (1) through (3) of this paragraph is shown. These distances shall correspond with the elevation of the airport, the runway to be used, the effective runway gradient, and the ambient temperature and wind component existing at the time of takeoff. (See §§ 4T.123(a)(3) and 4T.743(a).)

(1) The accelerate-stop distance shall not be greater than the length of the runway plus the length of the stopway if present.

(2) The takeoff distance shall not be greater than the length of the runway plus the length of the clearway if present, except that the length of the clearway shall not be greater than one-half of the length of the runway.

(3) The takeoff run shall not be greater than the length of the runway.

(d) No airplane shall be operated outside the operational limits specified in the Airplane Flight Manual. (See §§ 4T.123(a)(4) and 4T.743(a).)

5. The following definitions shall apply:

(a) **Clearway.** A clearway is an area beyond the runway, not less than 500 feet wide, centrally located about the extended center line of the runway, and under the control of the airport authorities. The clearway is expressed in terms of a clearway plane, extending from the end of the runway with an upward slope not exceeding 1.25 percent, above which no object nor any portion of

the terrain protrudes, except that threshold lights may protrude above the plane if their height above the end of the runway is not greater than 26 inches and if they are located to each side of the runway.

NOTE: For the purpose of establishing take-off distances and takeoff runs, in accordance with § 4T.117 of this regulation, the clearway plane is considered to be the takeoff surface.

(b) *Stopway.* A stopway is an area beyond the runway, not less in width than the width of the runway, centrally located about the extended center line of the runway, and designated by the airport authorities for use in decelerating the airplane during an aborted takeoff. To be considered as such, a stopway must be capable of supporting the airplane during an aborted takeoff without inducing structural damage to the airplane. (See also § 4T.115(d) of this regulation.)

(Secs. 313(a), 601, 603, 604, 72 Stat. 752, 775, 776, 778; 49 U.S.C. 1354(a), 1421, 1423, 1424)

Issued in Washington, D.C., on July 9, 1959.

JAMES T. PYLE,  
Acting Administrator.

JULY 9, 1959.

[F.R. Doc. 59-5810; Filed, July 13, 1959;  
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[Regulatory Docket 60; Special Civil Air Reg.  
SR-434]

## PART 20—PILOT AND INSTRUCTOR CERTIFICATES

### Elimination of Requirement for 100-Mile Solo Flight Experience for Issuance of Private Pilot Certificate on Island of Okinawa

Section 20.34(c) of the Civil Air Regulations presently provides that the aeronautical experience necessary for issuance of a private pilot certificate shall include 10 hours of solo cross-country flight time, at least one flight of which shall include a landing at a point more than 100 miles from the point of departure. The Naha Air Base Aero Club, a flying club composed of U.S. civil and military personnel, located at Sukiran Army Air Field on Okinawa and sponsored by the United States Air Force, has requested an exemption from the requirements of § 20.34(c) because the island is not large enough to permit the required 100-mile flight.

Okinawa is some 60 miles long and from 2 to 22 miles wide. The maximum distance between airports on the island is some 40 miles. Landings more than 100 miles from a point of departure on Okinawa may be made on other islands in the area, but such other islands are not equipped with adequate landing areas and flights to such landing areas would expose pilot trainees to the unnecessary hazard of overwater operations. The purpose of the requirement for a 100-mile solo cross-country flight is to develop the necessary skills in navigation from maps and unfamiliar visual landmarks. The experience to be gained from a 100-mile cross-country flight

would not be of any special value or assistance to a private pilot flying on Okinawa over that to be gained from a 40-mile cross-country flight on Okinawa. It appears that such a 40-mile flight as part of the 10 hours of solo cross-country flight time required by § 20.34(c) would so familiarize a pilot with the landmarks and terrain of the area in which he would be flying as to constitute an adequate standard of safety for issuance of a private pilot certificate for the island of Okinawa. A pilot holding such a certificate who may wish to obtain a certificate without limitation to Okinawa would still be required to comply with the experience requirement for the 100-mile solo cross-country flight prescribed by § 20.34(c).

Accordingly, this Special Civil Air Regulation is issued to permit such pilots to obtain a limited private pilot certificate without compliance with the 100-mile solo cross-country flight requirement of § 20.34(c). Since this regulation imposes no additional burden on any person, relieves a present restriction, and constitutes a grant of exemption, compliance with the notice, public participation, and effective date provisions of section 4 of the Administrative Procedure Act is unnecessary.

In consideration of the foregoing, the following Special Civil Air Regulation is hereby promulgated to become effective July 14, 1959:

1. The provision of § 20.34(c) of Part 20 of the Civil Air Regulations with respect to a 100-mile solo cross-country flight shall not apply to the issuance of a private pilot certificate to an applicant who demonstrates on the island of Okinawa, Ryukyu Islands, that he is otherwise eligible for issuance of such a certificate and who has completed a solo cross-country flight between those airports on Okinawa which are the farthest apart. A pilot certificate issued pursuant to this regulation shall contain the following limitation:

"The holder shall not pilot any aircraft carrying passengers except on flights over the island of Okinawa and within a radius of 40 miles from the airport of take-off."

2. The holder of a private pilot certificate issued subject to the limitations provided in paragraph 1 of this regulation may obtain a private pilot certificate without such limitation upon presentation to an inspector of the Federal Aviation Agency of satisfactory evidence of compliance with the 100-mile solo flight experience requirement of § 20.34(c) and after satisfactorily accomplishing a practical examination with respect to the procedures and maneuvers prescribed by § 20.35(b).

3. No private pilot certificate shall be issued under paragraph 1 of this regulation after June 30, 1961.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354(a). Interpret or apply secs. 601, 602, 72 Stat. 775, 776; 49 U.S.C. 1421, 1422)

Issued in Washington, D.C., on July 9, 1959.

JAMES T. PYLE,  
Acting Administrator.

JULY 9, 1959.

[F.R. Doc. 59-5811; Filed, July 13, 1959;  
8:51 a.m.]

## Chapter III—Federal Aviation Agency

### SUBCHAPTER C—AIRCRAFT REGULATIONS

[Regulatory Docket 55; Amdt. 30]

## PART 507—AIRWORTHINESS DIRECTIVES

### Miscellaneous Amendments

As a result of failures of rudder alleron bungee interconnect cables on Beech A45 and B45 aircraft; a possibility of wing splice plate cracks occurring on Boeing 707-100 series aircraft; and occurrence of lower front spar cap cracks with a possibility of lower center spar cap cracks developing on Douglas DC-6A and -6B aircraft, inspection and rework are required.

A revised airworthiness directive superseding 58-15-2 (23 F.R. 6343) is necessary to incorporate the latest version of a float installation for Marvel-Schebler carburetors. In addition, directive 59-7-3 for Lockheed aircraft is revised to eliminate removal from service of sound landing gear appearing to have a faulty weld, and directive 59-10-10 for Vickers Viscount 745 aircraft is corrected.

For the reasons stated above, the Administrator finds that corrective action is required in the interest of safety, that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective on less than 30 days notice.

In consideration of the foregoing § 507.10(a) is amended as follows:

1. 59-7-3 Lockheed 049, 149, 649, 749 and 1049 series aircraft as it appeared in 24 F.R. 4651 is revised by deleting the fifth paragraph and replacing with the following paragraphs:

Any cylinder exhibiting a cracked or faulty weld shall be immediately removed from service and replaced with a cylinder that has passed a radiographic inspection of the entire periphery of the weld using the following standard. Acceptable weld quality shall be as defined in MIL-R-11468 (dated September 24, 1951) Standard II except that incomplete root penetration as depicted by Figure B1a-2a up to a width of 0.080 inch for the complete strut periphery shall not be cause for rejection.

The indication of incomplete root penetration is due to a chamfer of approximately 0.040 inch on the upper inside bore of the cylinder which did not receive weldment during fabrication.

2. 59-10-10 Vickers Viscount 745D aircraft as it appeared in 24 F.R. 5178 is revised by changing "0.85 inch" in the first and second paragraphs to "0.95 inch" and changing the phrase "depth of the internal bore" in the second paragraph, second sentence to "depth of the internal threads".

3. The following new airworthiness directives are added:

59-13-4 BEECH. Applies to all Model A45 (T34A) and B45 airplanes incorporating FAA Certification Kit No. 45-322A.

Compliance required by August 15, 1959, and after each subsequent 100 hours of operation.

Disconnect the turnbuckles on the 45-524504 and 45-524505 rudder-alleron bungee

interconnect cable assemblies and make a thorough inspection of the cables. Prior to reassembly, replace any cables that show evidence of fraying, excessive wear, or internal breakage. Inspections are no longer necessary when kits using larger pulleys are installed.

(Beech Service Bulletin No. 32 on Models A45 (T34A) and B45 covers this same subject.)

59-13-5 BOEING. Applies to the following 707-100 Series aircraft only: Registry No. N707PA through N712FA, N70773, N7501A through N7514A, N731TW through N740TW, VH-EBA.

Compliance required as indicated.

The occurrence of seven wing splice plate cracks at Boeing on early 707 airplanes initiated laboratory tests and improved processing of the plates, which are installed at RBL and LBL 70.5 at the wing lower surface. Airplanes other than those noted above have the improved plates. The laboratory tests indicated a possibility of cracks occurring in service on the airplanes with the originally processed splice plates. One such crack has occurred in service. In view of these facts, the following inspections should be conducted on the above aircraft as indicated.

Unless already completed, within the next 200 to 400 flight-hours and again at 3,000 to 3,300 flight-hours, the following inspection will be accomplished (Normal inspection procedures will be followed after accomplishment of these two special inspections):

(a) Remove left and right hand lower wing-body fairings.

(b) Visually inspect all wing lower splice plates for cracks at LBL and RBL 70.5.

(c) If cracks are found, replace cracked splice plate with Boeing redesigned plate according to the revised Boeing installation procedures.

(Boeing Service Bulletin No. 186 pertains to this same subject.)

59-13-6 DOUGLAS. Applies to the following aircraft: DC-6A Serial Numbers 43296, 43297, 43817-43819, 43839-43841, 44063, 44064, 44069-44076, 44257. DC-6B Serial Numbers 43257-43259, 43261-43276, 43291, 43292, 43298-43300, 43518-43537, 43539-43547, 43549-43555, 43557-43564, 43738-43746, 43748-43750, 43820-43822, 43824-43826, 43828-43834, 43836, 43837, 43842, 43844-43847, 44056-44062, 44080-44083, 44087-44089, 44102-44113, 44165-44168 and 44251.

Compliance required as indicated.

Several instances of lower front spar cap cracks have been reported. The cracks involved are located at wing station 30 at the intersection of lower front spar cap aft tang and wing to fuselage attach angle. To date no cracks have been found in the lower center spar cap; however, due to the similarity of the structure, it is logical to assume that cracks can occur in this cap as well as in the lower front spar cap. To detect cracking of the lower front and center spar cap tangs at intersection with lower fuselage attach angle, the following must be accomplished on affected aircraft having in excess of 12,000 flying hours.

(a) Inspect lower front spar caps at nearest maintenance inspection period to 200-flight hours unless similar inspection has been conducted within last 1,250 flying hours.

(b) Inspect lower front and center spar caps at maintenance inspection period nearest to each succeeding 1,250 flying hours.

(1) At first 1,250-hour inspection period, holes in aft tang of front spar lower cap and fuselage attach angle should be enlarged and new attachments installed (KIT "A" of Douglas SB A-821 or equivalent).

(2) At next regularly scheduled overhaul period, holes located in forward tang of front

spar lower cap should be enlarged and new attachments installed (KIT "A" of Douglas SB A-821 or equivalent).

(c) In event spar cap cracking is found at the 200-hour initial or 1,250-hour repetitive inspection periods, temporary rework per drawing No. 3645935 (KIT "B"), or equivalent, may be accomplished. With temporary rework installed, inspection must be repeated at the 1,250-hour intervals for a maximum of 3,200 flight-hours at which time permanent rework per drawing No. 5761922 (KIT "C"), or equivalent, must be accomplished.

(d) All aircraft not already reworked per (c) above must have permanent rework per drawing No. 5761922 (KIT "C"), or equivalent, accomplished within the next 6,400 flying hours.

(e) After installation of KIT "C", operators may revert to normal repetitive inspection periods not to exceed 3,200 flying hours. (Douglas Service Bulletin DC-6 No. A-821 dated March 13, 1959, covers this same subject.)

59-13-7 MARVEL-SCHUEBLER. Applies to all Marvel-Schebler MA4-5 and MA4-5AA Carburetors with Serial Numbers 3999574 and Under. These Carburetors Are Used With Various Continental, Franklin, and Lycoming Engine Models. Compliance required by August 15, 1959, unless already accomplished.

Repetitive reports of retention failure of the float and lever assembly used with early type MA4-5 and MA4-5AA carburetors necessitate compliance with the following to correct this difficulty and maintain engine airworthiness:

(1) Remove float assembly P/N 30-629. (In this assembly the float is soldered to the lever for retention.)

(2) Install revised float assembly P/N A30-629 which has a rigid reinforcing brace added at the junction of the float and lever or the latest version of the float which is made of molded rubber. The reinforced float is incorporated in serial numbers 3999575 through 4012823 and the molded rubber float is incorporated in serial numbers 4012824 and up.

(Marvel-Schebler Products Division, Borg-Warner Corporation, Decatur, Illinois, Service Bulletins Nos. 5-57 and 4-59, Continental Service Bulletin 57-3, and Lycoming Service Bulletin No. 237 cover this same subject.)

This supersedes AD 58-15-2.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on July 8, 1959.

JAMES T. PYLE,  
Acting Administrator.

JULY 8, 1959.

[F.R. Doc. 59-5768; Filed, July 13, 1959; 8:45 a.m.]

[Regulatory Docket No. 54; Amdt. 23]

**PART 514—TECHNICAL STANDARD ORDERS FOR AIRCRAFT MATERIALS, PARTS, PROCESSES, AND APPLIANCES**

**TSO-C57, Aircraft Headsets and Speakers; TSO-C58, Aircraft Microphones**

Proposed §§ 514.56 and 514.57 establishing minimum performance standards for aircraft headsets and speakers and aircraft microphones to be used on civil aircraft of the United States engaged in

air carrier operations were published in 24 F.R. 2751 and 2752.

After publication as a proposed rule, a discrepancy was noted requiring a minor change in subparagraph (2) of proposed § 514.56. In addition, RTCA Paper 100-54/DO-60, referenced in both proposed sections, has been amended necessitating a revision in format.

Interested persons have been afforded an opportunity to participate in the making of the rules, and due consideration has been given to all relevant matter presented. Since the above changes provide a relaxation in the proposed rules, republication for further comment is not necessary.

In consideration of the foregoing, Part 514 of the Regulations of the Administrator (14 CFR Part 514) is hereby amended as follows effective on the dates indicated:

1. Section 514.56 is added as follows:

**§ 514.56 Aircraft headsets and speakers (for air carrier aircraft)—TSO-C57.**

(a) *Applicability*—(1) *Minimum performance standards*. Minimum performance standards are hereby established for aircraft headsets and speakers which are to be used on civil aircraft of the United States engaged in air carrier operations. New models of aircraft headsets and speakers manufactured for use on civil aircraft on or after August 14, 1959, shall meet the minimum performance standards as set forth in Radio Technical Commission for Aeronautics' Paper entitled "Minimum Performance Standards—Aircraft Headsets and Speakers" (Paper 257-58/DO-90 dated November 18, 1958).<sup>1</sup> Radio Technical Commission for Aeronautics' Paper 100-54/DO-60<sup>1</sup> which is incorporated by reference in and thus is a part of Paper 257-58/DO-90 has been amended by Paper 256-58/EC-366 dated November 13, 1958. This amendment is also a part of the minimum performance standards. Exceptions to these standards are covered in subparagraph (2) of this paragraph.

(2) *Exceptions*. (i) Radio Technical Commission for Aeronautics' Paper 100-54/DO-60, and amendment Paper 256-58/EC-366 dated November 13, 1958, outline environmental test procedures for equipment designed to operate under three environmental test conditions as specified therein under Procedures A, B, and C. Only aircraft headsets and speakers which meet the operating requirements as outlined under Procedure A or Procedure B of Paper 100-54/DO-60, as amended, are eligible under this section.

(ii) Radio Technical Commission for Aeronautics' Paper 257-58/DO-90 dated November 18, 1958, paragraph 2.3, Pilot Operated Gain Control. The provisions of this paragraph are applicable only to attenuators which are a part of the headset assembly.

<sup>1</sup> Copies of these papers may be obtained from the RTCA Secretariat, Room 1072, T-5 Building, 16th and Constitution Avenue NW., Washington 25, D.C. Paper 257-58/DO-90, 25 cents per copy; Paper 100-54/DO-60, 20 cents per copy.

(b) *Marking.* In addition to the information required in § 514.3, equipment which has been designed to operate over the environmental conditions as outlined in Procedure A of RTCA Paper 100-54/DO-60, as amended, shall be marked as Category A equipment. Equipment which has been designed to operate over the environmental conditions as outlined in Procedure B of this same paper, as amended, shall be marked as Category B equipment.

(c) *Data requirements.* One copy each of the manufacturer's operating instructions, schematic diagrams, and installation procedures shall be furnished the Chief, Engineering and Manufacturing Division, Federal Aviation Agency, Washington 25, D.C., with the statement of conformance.

(d) *Previously approved equipment.* Aircraft headsets and speakers approved by the Administrator prior to August 14, 1959, may continue to be manufactured under the provisions of their original approval.

*Effective date.* August 14, 1959.

2. Section 514.57 is added as follows:

§ 514.57 Aircraft microphones (for air carrier aircraft)—TSO-C58.

(a) *Applicability*—(1) *Minimum performance standards.* Minimum performance standards are hereby established for aircraft microphones which are to be used on civil aircraft of the United States engaged in air carrier operations. New models of aircraft microphones manufactured for use on civil aircraft on or after August 14, 1959, shall meet the minimum performance standards as set forth in Radio Technical Commission for Aeronautics' Paper entitled "Minimum Performance Standards—Aircraft Microphones" (Paper 258-58/DO-91 dated November 18, 1958).<sup>2</sup> Radio Technical Commission for Aeronautics' Paper 100-54/DO-60<sup>2</sup> which is incorporated by reference in and thus is a part of Paper 258-58/DO-91 has been amended by Paper 256-58/EC-366 dated November 13, 1958. This amendment is also a part of the minimum performance standards. An exception to these standards is covered in subparagraph (2) of this paragraph.

(2) *Exception.* Radio Technical Commission for Aeronautics' Paper 100-54/DO-60, and amendment Paper 256-58/EC-366 dated November 13, 1958, outline environmental test procedures for equipment designed to operate under three environmental test conditions as specified therein under Procedure A, B, and C. Only aircraft microphones which meet the operating requirements as outlined under Procedure A or Procedure B of Paper 100-54/DO-60, as amended, are eligible under this section.

(b) *Marking.* In addition to the information required in § 514.3, equipment which has been designed to operate over the environmental conditions as outlined in Procedure A of RTCA Paper 100-54/

<sup>2</sup> Copies of these papers may be obtained from the RTCA Secretariat, Room 1072, T-5 Building, 16th and Constitution Avenue NW., Washington 25, D.C. Paper 258-58/DO-91, 25 cents per copy; Paper 100-54/DO-60, 20 cents per copy.

DO-60, as amended, shall be marked as Category A equipment. Equipment which has been designed to operate over the environmental conditions as outlined in Procedure B of this same paper, as amended, shall be marked as Category B equipment.

(c) *Data requirements.* One copy each of the manufacturer's operating instructions, schematic diagrams, and installation procedures shall be furnished the Chief, Engineering and Manufacturing Division, Federal Aviation Agency, Washington 25, D.C., with the statement of conformance.

(d) *Previously approved equipment.* Aircraft microphones approved by the Administrator prior to August 14, 1959, may continue to be manufactured under the provisions of their original approval.

*Effective date.* August 14, 1959.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354(a). Interpret or apply sec. 601, 72 Stat. 775; 49 U.S.C. 1421)

Issued in Washington, D.C., on July 8, 1959.

JAMES T. PYLE,  
Acting Administrator.

JULY 8, 1959.

[F.R. Doc. 59-5769; Filed, July 13, 1959; 8:45 a.m.]

## Title 24—HOUSING AND HOUSING CREDIT

### Chapter II—Federal Housing Administration, Housing and Home Finance Agency

#### SUBCHAPTER C—MUTUAL MORTGAGE INSURANCE AND SERVICEMEN'S MORTGAGE INSURANCE

#### PART 221—MUTUAL MORTGAGE INSURANCE; ELIGIBILITY REQUIREMENTS OF MORTGAGE COVERING ONE- TO FOUR-FAMILY DWELLINGS

##### Eligibility of Miscellaneous Type Mortgages

In § 221.42, paragraph (j) is amended to read as follows:

§ 221.42 Eligibility of miscellaneous type mortgages.

(j) Notwithstanding the provisions of § 221.11(a), in connection with mortgages on properties located within the Boulder City municipal area as provided in subparagraph (3) and mortgages of the character described in subparagraph (4) of paragraph (b), applications for commitments shall be accompanied by the mortgagee's check for the sum of \$10 to cover the cost of processing by the Commissioner. If an application is refused as a result of preliminary examination by the Commissioner, or in such other instances as the Commissioner may determine, the entire fee will be returned to the applicant.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interpret or applies sec. 203, 52 Stat. 10, as amended; 12 U.S.C. 1709)

Issued at Washington, D.C., July 8, 1959.

[SEAL] JULIAN H. ZIMMERMAN,  
Federal Housing Commissioner.

[F.R. Doc. 59-5790; Filed, July 13, 1959; 8:48 a.m.]

## Title 26—INTERNAL REVENUE, 1954

### Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 6396]

#### SUBCHAPTER E—ALCOHOL, TOBACCO, AND OTHER EXCISE TAXES

#### PART 253—REMOVAL OF ALCOHOLIC LIQUORS, TOBACCO PRODUCTS AND OTHER DOMESTIC ARTICLES TO FOREIGN-TRADE ZONES

On May 14, 1959, a notice of proposed rule making with respect to the amendments of 26 CFR Part 253 was published in the FEDERAL REGISTER (24 F.R. 3881). No objection to the proposed amendments having been received during the 30-day period prescribed in the notice, the regulations as so published are hereby adopted.

The purposes of this Treasury decision are to implement the provisions of section 201 of the Excise Tax Technical Changes Act of 1958, 72 Stat. 1313, with respect to distilled spirits and wines deposited in a foreign-trade zone with benefit of drawback and to eliminate provisions with respect to stills, worms, and condensers.

##### § 253.20 [Amendment]

PARAGRAPH 1. Section 253.20 is amended as follows:

(A) By deleting the definition of "alcohol", and

(B) By amending the definition of "articles" to read as follows:

*Articles.* "Articles" shall include liquors as defined in this subpart and tobacco products and cigarette papers and tubes.

PAR. 2. Section 253.202 is amended to read as follows:

##### § 253.202 General.

Distilled spirits bottled or packaged after the tax is paid or determined, and wine and bottled-in-bond spirits on which the tax has been paid or determined, which may be exported with benefit of drawback under Part 252 of this chapter, may be deposited, with benefit of drawback of the internal revenue tax paid or determined thereon, in foreign-trade zones for exportation or storage therein pending exportation. Except as otherwise provided in this subpart the provisions of Part 252 of this chapter, relating to the drawback on such distilled spirits and wines shall apply, to the extent applicable, to the rectification (if any), bottling and packaging, casing of bottles, marking of cases and packages, the transfer and storage pending transfer of such liquors to a zone,

the filing of Form 1582 (as to distilled spirits) or Form 1582-A (as to wines), the inspection and removal from export storage, and the transfer to a zone: *Provided*, That no bond will be required respecting such removals.

(46 Stat. 690, as amended, 48 Stat. 999, 72 Stat. 1336; 19 U.S.C. 81c, 1309, 26 U.S.C. 5062)

PAR. 3. The undesignated center headline immediately preceding § 253.206 is amended to read "Packages Filled in Internal Revenue Bond."

PAR. 4. Section 253.206 is amended to read as follows:

§ 253.206 General.

Packages of distilled spirits filled in internal revenue bond on which the tax has been paid or determined and to which prescribed stamps are affixed, containing not less than 20 wine gallons each, may be deposited, with the privilege of drawback of the internal revenue tax, in a foreign-trade zone for exportation or storage therein pending exportation. Except as otherwise provided in this subpart, the provisions of Part 252 of this chapter relating to the exportation of distilled spirits in packages filled in internal revenue bond with benefit of drawback are hereby made applicable to the deposit of spirits in foreign-trade zones with respect to the filing of applications, entries, and claims on Form 1629, the filing of evidence as to ownership of the spirits, and the inspection and gauge of the spirits including the reporting of such gauge by customs officers.

(48 Stat. 999, 72 Stat. 1327; 19 U.S.C. 81c, 26 U.S.C. 5009)

§ 253.207 [Amendment]

PAR. 5. Section 253.207 is amended as follows:

(A) By deleting the words "distillers' original packages" immediately following the phrase "to deposit distilled spirits in", and by inserting in lieu thereof the words "packages filled in internal revenue bond".

(B) By amending the citation at the end thereof to read "(72 Stat. 1327; 26 U.S.C. 5009)".

§§ 253.250-253.253 [Revocation]

PAR. 6. All of Subpart I, entitled "Removal of Stills or Distilling Apparatus for Deposit in a Foreign-Trade Zone for Exportation, Destruction, or Storage Pending Exportation", and embracing §§ 253.250 to 253.253, inclusive, is hereby revoked.

Because this Treasury decision implements changes made in chapter 51 of the Internal Revenue Code of 1954 by the Excise Tax Technical Changes Act of 1958 (Public Law 85-859, 72 Stat. 1275) which are effective July 1, 1959, and in order that these regulations may become effective on the same date as the changes in law, it is hereby found that it is impracticable and contrary to the public interest to issue this Treasury decision subject to the effective date limitation of section 4(c) of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003).

Accordingly this Treasury decision shall be effective July 1, 1959.

(68A Stat. 917; 26 U.S.C. 7805)

[SEAL] DANA LATHAM,  
Commissioner of Internal Revenue.  
RALPH KELLY,  
Commissioner of Customs.

Approved: July 8, 1959.

FRED C. SCRIBNER, JR.,  
Acting Secretary of the Treasury.

[F.R. Doc. 59-5792; Filed, July 13, 1959; 8:48 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 59-690]

PART 11—INDUSTRIAL RADIO SERVICES

Station Limitations

1. The Commission has before it for consideration a Petition for Rule Amendments, filed on April 27, 1959, by the National Association of Manufacturers Committee on Manufacturers Radio Use. In the petition, it is requested (1) that the Commission eliminate so much of § 11.729(b) of the Rules Governing the Manufacturers Radio Service as restricts the location of Base Stations to "within the boundaries of a plant, factory, shipyard, mill or other manufacturing area occupied and controlled by the applicant \* \* \* (or, upon a showing of impracticability with respect to such location, to) \* \* \* a location immediately adjacent thereto"; and (2) that there be deleted § 11.729(d) of the above rules, which presently restricts licensees in the service to a maximum plate power input to the final radio frequency stage of 60 watts.

2. In support of the requested amendments, petitioner contends that many manufacturers are being unduly hampered by the above restrictions, particularly, in their materials-handling and plant-security functions. In this connection it is demonstrated that, in some cases, a radio system is required for the dispatch and control of vehicles used to pick up component materials from other manufacturing sources located outside its immediate plant areas and scattered throughout a large metropolitan area, adequate coverage of which cannot be effected by a base station located as presently required by the Rules. It is further shown that other manufacturers are similarly handicapped by virtue of their having separate manufacturing plants at a number of locations within a particular city.

3. Although its action can be said to be somewhat in departure from the original concept of the Manufacturers Radio Service (see paragraphs 32 through 39 of the Commission's First Report and Order in Docket No. 11991, FCC 58-602), the Commission is disposed to extend a measure of relief on the basis of the showings set forth in the petition. It will be recalled, however, that, although

the service's frequency allocation is exclusive insofar as its frequencies above 450 Mc are concerned, its 152-162 Mc frequencies are presently shared with the heavily-used Petroleum and Forest Products Radio Services. With respect to these latter frequencies, the Commission believes that additional study must be given to all possible effects of dropping the restrictions before the matter can be considered further. In this connection, one of the bases for the sharing arrangement was the consideration that the greatest manufacturers' use of these frequencies would be at relatively-low power, and in metropolitan areas not normally the site of petroleum or forestry operations.

4. Because (as above stated) the service's frequency allocation above 450 Mc is exclusive, relief with respect to these frequencies can be extended with no harmful consequence to licensees in other services. Additionally, because of the relatively-light loading in the Manufacturers Radio Service and the lesser coverage of 450 Mc operations, the Commission is persuaded that there would be no significant adverse effect upon licensees in the same service. It appears, therefore, that amendments eliminating the restrictions with respect to this band can be effected without the necessity of the notice and public procedures contemplated by section 4 of the Administrative Procedure Act. In this connection the Commission has not overlooked the fact that the amendment herein ordered with respect to § 11.729(b) also applies to the 27 Mc frequencies presently shared with a number of other services. Because of this high degree of sharing, and because all operations on these frequencies are limited to 30 watts input, no significant adverse effect is foreseen.

5. Authority for the amendments ordered herein is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended. Because they relieve restrictions, the effective date of the amendments need not be delayed for the 30-day period specified in section 4(c) of the Administrative Procedure Act.

6. In view of the foregoing, it is ordered, this 8th day of July 1959, (a) That the Petition for Rule Amendments, filed on April 27, 1959, by the National Association of Manufacturers Committee on Manufacturers Radio Use, is granted in part; and (b) that effective July 17, 1959, Part 11 of the Commission's rules is amended in the manner set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: July 9, 1959.

FEDERAL COMMUNICATIONS COMMISSION,  
[SEAL] MARY JANE MORRIS,  
Secretary.

Section 11.729 (b) and (d) is amended to read as follows:

§ 11.729 Station limitations.

\* \* \* \* \*

(b) No Base Station will be authorized in this service for operation at unspeci-

fied or temporary locations, and no Base Station proposed to be operated on frequencies in the 152-162 Mc band will be authorized for operation at a location other than one within the boundaries of a plant, factory, shipyard, mill or other manufacturing area occupied and controlled by the applicant: *Provided, however*, That when it is shown that location within the boundaries of such manufacturing area is impracticable, the Commission may authorize a location immediately adjacent thereto.

(d) No station in this service proposed to be operated on frequencies in the 152-162 Mc band will be authorized to operate with a plate power input to the final radio frequency stage in excess of 60 watts.

[F.R. Doc. 59-5800; Filed, July 13, 1959; 8:49 a.m.]

## Title 43—PUBLIC LANDS: INTERIOR

### Chapter I—Bureau of Land Management, Department of the Interior

#### APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 1895]

[Fairbanks 019382]

#### ALASKA

#### Withdrawing Lands for Use of Bureau of Public Roads as Administrative Site

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, but not disposals of materials under the act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604) as amended, and reserved for use of the Bureau of Public Roads, Department of Commerce, as an administrative site:

#### DENALI HIGHWAY—MACLAREN RIVER AREA

Beginning at a point on the center line of the Denali Highway, which point is ten feet northeast of the northeast end of the MacLaren River Bridge; thence

N. 79°36' E., 400 feet along the centerline of the Denali Highway;  
N. 10°24' W., 700 feet;  
S. 79°36' W., 290 feet to a point on the left bank of the MacLaren River;  
Southerly, 540 feet following the meanders of the left bank of the MacLaren River;  
S. 39°20' E., 170 feet;  
S. 10°24' E., 100 feet to the point of beginning.

The tract described contains 6.72 acres.

ROGER ERNST,  
Assistant Secretary of the Interior.

JULY 8, 1959.

[F.R. Doc. 59-5773; Filed, July 13, 1959; 8:45 a.m.]

[Public Land Order 1896]

[Sacramento 055692]

#### CALIFORNIA

#### Order Opening Lands to Location, Entry and Patent Under General Mining Laws

By virtue of the authority vested in the Secretary of the Interior by the act of April 23, 1932 (47 Stat. 136; 43 U.S.C. 154), it is ordered as follows:

Subject to valid existing rights and the provisions of existing withdrawals, the following-described national forest lands in the Shasta Trinity National Forest shall, commencing at 10:00 a.m. on August 13, 1959, be open to location, entry and patenting under the United States mining laws, subject to the stipulations quoted below, to be executed and acknowledged in favor of the United States by the locators, for themselves, their heirs, successors and assigns, and recorded in the county records and in the United States Lands Office at Sacramento, California, before any rights attach by virtue of this order:

#### MOUNT DIABLO MERIDIAN

T. 33 N., R. 4 W.,

Sec. 3, lots 1 and 2, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ NE $\frac{1}{4}$  (excluding Mineral Survey No. 4269).

The areas described contain approximately 199 acres.

The following stipulations are made a part of this order:

1. No pollution of any kind shall be allowed to enter Shasta Reservoir or any stream flowing into Shasta Reservoir.
2. Crusher plant dust and kiln fumes shall be controlled so as not to cause harm to vegetation or air pollution problems on United States owned lands.
3. There is reserved to the United States the right to construct and maintain telephone, telegraph, power transmission lines and roadways.
4. There is reserved to the United States a strip of land of varying widths across Sections 2 and 3, T. 33 N., R. 4 W., M.D.M., upon which is located the Stillwater to Bully Hill 60 kv P.G. & E. Transmission Line. This line is a part of the various utility company relocations in the Shasta Reservoir area. The deed covering this relocation has not yet been executed.
5. The permittee shall fully and currently repair all damage, other than ordinary wear and tear to national forest roads.
6. The Forest Service and its permittees and assigns shall have the right to use any road constructed by the permittee for any and all purposes in connection with the protection and administration of the National Forest or other lands under its jurisdiction.
7. All provisions of the Act of July 23, 1955 (P.L. 167) shall be adhered to.

ROGER ERNST,  
Assistant Secretary of the Interior.

JULY 8, 1959.

[F.R. Doc. 59-5774; Filed, July 13, 1959; 8:45 a.m.]

## Title 49—TRANSPORTATION

### Chapter I—Interstate Commerce Commission

#### SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Docket No. 3666; Order 39]

#### PARTS 71-78—EXPLOSIVES AND OTHER DANGEROUS ARTICLES

#### Miscellaneous Amendments

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D.C., on the 29th day of June 1959.

The matter of revision of certain regulations governing the transportation of explosives and other dangerous articles, formulated and published by the Commission, being under consideration, and

It appearing, that Notice No. 39, dated May 12, 1959, setting forth certain proposed amendments to the said regulations, and the reasons therefor, and stating that consideration was to be given thereto, was published in the FEDERAL REGISTER on May 27, 1959 (24 F.R. 4265), pursuant to the provisions of section 4 of the Administrative Procedure Act; that pursuant to said notice interested parties were given an opportunity to be heard with respect to said proposed amendments; that written views or arguments were submitted to the Commission with respect to the proposed amendments;

And it further appearing, that said views and arguments with respect to the proposed amendments are such as to warrant revision at this time of certain of the proposed amendments, and that in all other respects the proposed amendments set forth in the above referred-to Notice No. 39 are deemed justified and necessary:

*It is ordered*, That the aforesaid regulations governing the transportation of explosives and other dangerous articles be, and they are hereby, amended in the manner and to the extent set forth in said Notice No. 39, dated May 12, 1959, as revised by the specific deletions and modifications set forth as follows:

1. Delete the entire proposed amendment to § 73.150 which is paragraph (a).
2. Delete the entire proposed amendment to § 73.240 which is paragraph (a).
3. Revise the amendatory text to § 77.823 and delete the proposed addition of paragraph (h).
4. In § 78.209-8(a) (2) change the 14th word in the 6th line to read, "out" instead of "cut."
5. In § 78.330-9 amend paragraph (a).

*It is further ordered*, That this order shall become effective September 26, 1959 and shall remain in effect until further order of the Commission;

*It is further ordered*, That compliance with the herein prescribed and amended regulations is hereby authorized on and after the date of service of this order;

And it is further ordered, That copies of this order be served upon all parties of record herein, and that notice shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy thereof with the Director, Office of the Federal Register.

**AUTHORITY:** 62 Stat. 738, 18 U.S.C. 831-835; 49 Stat. 546, 52 Stat. 1237, 54 Stat. 921, 49 U.S.C. 304.

By the Commission, Division 3.

[SEAL] HAROLD D. McCoy,  
Secretary.

**PART 72—COMMODITY LIST OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL ARTICLES SUBJECT TO PARTS 71-78 OF THIS CHAPTER**

Amend § 72.5 Commodity List (18 F.R. 3133, June 2, 1953) (15 F.R. 8263, 8265, 8266, 8268, 8271, 8272, 8273, Dec. 2, 1950) (22 F.R. 11030, Dec. 31, 1957) (22 F.R. 7835, Oct. 3, 1957) as follows:

§ 72.5 List of explosives and other dangerous articles.  
(a) \* \* \*

Article	Classed as	Exemptions and packing (see sec.)	Label required if not exempt	Maximum quantity in 1 outside container by rail express
(Change)				
*Alcohol, n.o.s. *Butyl alcohol. See Alcohol, n.o.s. *Ethyl alcohol. See Alcohol, n.o.s. Methanol (methyl alcohol). See Wood alcohol. Methyl alcohol (methanol). See Wood alcohol. Vinyl chloride.	F.L.	73.118, 73.125.	Red	10 gallons.
(Add)				
Denatured alcohol. See Alcohol, n.o.s. Igniter fuse-metal clad.	Expl. C.	No exemption, 73.106.		150 pounds.
*Propyl alcohol. See Alcohol, n.o.s. *Tertiary alcohol. See Alcohol, n.o.s. Wood alcohol (methanol, methyl alcohol).	F.L.	73.118, 73.125.	Red	10 gallons.
(Cancel)				
*Alcohol, butyl. See Alcohol, n.o.s. Alcohol, denatured. See Alcohol, n.o.s. Alcohol, ethyl. See Alcohol, n.o.s. *Alcohol, propyl. See Alcohol, n.o.s. *Alcohol, tertiary. See Alcohol, n.o.s. Alcohol, wood (methanol, methyl alcohol).	F.L.	73.118, 73.125.	Red	10 gallons.

**PART 73—SHIPPERS**

**Subpart A—Preparation of Articles for Transportation by Carriers by Rail Freight, Rail Express, Highway, or Water**

1. In § 73.31 amend footnote \* to table 1 in paragraph (g) (9) (22 F.R. 4789, July 9, 1957) to read as follows:

§ 73.31 Qualification, maintenance, and use of tank cars.

\* \* \* \* \*  
(g) \* \* \*  
(9) \* \* \*

\* Tanks and safety valves in chlorine service must be retested every two years at any time during the calendar month the retest falls due. See § 73.314(a) Note 18.

2. In § 73.32 amend paragraph (e) (2) (24 F.R. 903, Feb. 6, 1959) to read as follows:

§ 73.32 Qualification, maintenance, and use of portable tanks.

\* \* \* \* \*  
(e) \* \* \*

(2) Every portable tank container which is constructed in accordance with ICC Specification 51 (§ 78.245 of this chapter), or qualified for transporting compressed gases as prescribed in these regulations shall be tested at least once in every five years in accordance with paragraph (e) (3), (4), and (5) of this section. A written record indicating the

dates and results of all required pressure tests shall be retained.

**Subpart B—Explosives; Definitions and Preparation**

1. In § 73.53 amend paragraphs (h) (1) and (n) (15 F.R. 8285, 8286, Dec. 2, 1950) to read as follows:

§ 73.53 Definition of class A explosives.

\* \* \* \* \*

(h) \* \* \*  
(1) A shaped charge, commercial, consists of a plastic, paper, or other suitable container comprising a charge of not to exceed 8 ounces of a high explosive containing no liquid explosive ingredient and with a hollowed-out portion (cavity) lined with a rigid material. Detonators or other initiating elements shall not be assembled in the device unless approved by the Bureau of Explosives.

(No change in Notes 1 through 5.)

(n) *Explosive mines.* Explosive mines are metal or composition containers filled with a high explosive.

2. In § 73.60 amend paragraph (a) (6) (20 F.R. 8099, Oct. 28, 1955) to read as follows:

§ 73.60 Black powder and low explosives.

(a) \* \* \*

(6) Spec. 12H, 23F, or 23H (§§ 78.209, 78.214, or 78.219 of this chapter). Fiberboard boxes with inside cylindrical fiber cartridges not over 5 inches diameter nor

over 18 inches long with fiber at least 0.05 inch thick paraffined on outer surface with joints securely glued or cemented, or strong paraffined paper cartridges not over 12 inches long authorized only for compressed pellets (cylindrical block) 7/8 inch or more in diameter. Authorized gross weight not to exceed 65 pounds.

3. In § 73.100 add paragraph (dd) (15 F.R. 8296, Dec. 2, 1950) to read as follows:

§ 73.100 Definition of class C explosives.

\* \* \* \* \*

(dd) Igniter fuse-metal clad consists of a base lead tube with a core of high explosive composition in quantity not exceeding 20 grains per foot.

4. In § 73.106 amend the heading and paragraph (a) (15 F.R. 8296, Dec. 2, 1950) to read as follows:

§ 73.106 Cartridge bags, empty, with black powder igniters, igniters, safety squibs, electric squibs, delay electric igniters, igniter fuse-metal clad, and fuse lighters or fuse igniters.

(a) Cartridge bags, empty, with black powder igniters, igniters, safety squibs, electric squibs, delay electric igniters, igniter fuse-metal clad, and fuse lighters or fuse igniters must be packed in strong fiberboard or wooden boxes or wooden or metal barrels or drums properly described and properly marked with the name of the article packed therein.

**Subpart C—Flammable Liquids; Definition and Preparation**

1. In § 73.127 amend the heading (23 F.R. 4028, June 10, 1958) to read as follows:

§ 73.127 Nitrocellulose or collodion cotton, fibrous, or nitrostarch, wet, nitrocellulose flakes, colloided nitrocellulose, granular or flake, and lacquer base or lacquer chips, wet.

2. In § 73.136 add paragraph (a) (8) (15 F.R. 8302, Dec. 2, 1950) to read as follows:

§ 73.136 Methyl dichlorosilane and trichlorosilane.

(a) \* \* \*

(8) Spec. MC 330 (§ 78.336 of this chapter). Tank motor vehicle.

3. In § 73.145 add paragraph (a) (7) (20 F.R. 8101, Oct. 28, 1955) to read as follows:

§ 73.145 Dimethylhydrazine, unsymmetrical, and methylhydrazine.

(a) \* \* \*

(7) Spec. MC 300, MC 301, MC 302, MC 303, MC 310, or MC 311 (§§ 78.321, 78.322, 78.323, 78.324, 78.330, or 78.331 of this chapter). Tank motor vehicles equipped with steel safety valves of approved design. Spec. MC 300, MC 301, MC 302, and MC 303 (§§ 78.321, 78.322, 78.323, 78.324 of this chapter) cargo tanks must not be equipped with bottom outlets. Authorized only for dimethylhydrazine, unsymmetrical.

**Subpart D—Flammable Solids and Oxidizing Materials; Definition and Preparation**

1. In § 73.190 amend paragraph (b) (4) (21 F.R. 3010, May 5, 1956) to read as follows:

§ 73.190 Phosphorus, white or yellow.

(b) \* \* \*  
 (4) Spec. MC 310 or MC 311 (§§ 78.330 or 78.331 of this chapter), tank motor vehicles, without bottom outlet and with insulation at least 4 inches in thickness, except that 2 inches of insulation is authorized for tanks equipped with an exterior heating jacket. Interior heating coils are not authorized. The material must be immersed in water or be blanketed with an inert gas and be loaded at a temperature not exceeding 140° F. After unloading, the tank must be filled to its entire capacity with an inert gas or to its entire capacity with water having a temperature not exceeding 140° F.

2. In § 73.219 cancel paragraph (a) (2) (15 F.R. 8311, Dec. 2, 1950) as follows:

§ 73.219 Potassium perchlorate.

(a) \* \* \*  
 (2) Canceled.

**Subpart E—Acids and Other Corrosive Liquids; Definition and Preparation**

1. In § 73.249 add paragraph (a) (11); amend the introductory text of paragraph (b) and amend paragraph (b) (1) (15 F.R. 8314, Dec. 2, 1950) (21 F.R. 3011, May 5, 1956) (21 F.R. 7601, Oct. 4, 1956) to read as follows:

§ 73.249 Alkaline corrosive liquids, n.o.s., alkaline caustic liquids, n.o.s., alkaline battery fluids, and sodium aluminate, liquid.

(a) \* \* \*  
 (11) Spec. 29 (§ 78.226 of this chapter). Mailing tubes, with not more than one inside polyethylene bottle not over 1-quart capacity each.

(b) Alkaline corrosive liquids, n.o.s., alkaline caustic liquids, n.o.s., alkaline battery fluids, and sodium aluminate, liquid, when offered for transportation by rail express, must be packed in specification containers as follows (also authorized for transportation by carriers by rail freight, highway, or water):

(1) In containers as prescribed in paragraphs (a) (8), (9), (10), and (11) of this section.

2. In § 73.260 amend paragraph (a) (2) (15 F.R. 8315, Dec. 2, 1950) to read as follows:

§ 73.260 Electric storage batteries, wet.

(a) \* \* \*  
 (2) Spec. 12B (§ 78.205 of this chapter). Fiberboard box as authorized by §§ 78.205-25(a), 78.205-28(a), and 78.205-35(a) of this chapter.

3. In § 73.266 add paragraph (f) (2); cancel paragraph (g) (15 F.R. 8319, Dec. 2, 1950) (16 F.R. 5325, June 6, 1951) to read as follows:

§ 73.266 Hydrogen peroxide solution in water.

(f) \* \* \*  
 (2) Spec. MC 310-H<sub>2</sub>O<sub>2</sub> (§ 78.330 of this chapter). Tank motor vehicles. Tanks shall be welded construction of aluminum meeting the requirements of § 78.330-9(a) of this chapter having a minimum wall thickness of one-half inch, and must be built to a design working pressure of not less than 40 psig. and shall be designed so that internal surfaces may be effectively cleaned and passivated; all openings to be located on top of tank; all valves and safety devices shall be provided with overturn protection and dust covers; metal identification plate required by § 78.330-5(a) of this chapter shall be marked "ICC MC 310-H<sub>2</sub>O<sub>2</sub>" and in addition the vehicle shall be clearly marked in letters not less than one inch high "FOR HYDROGEN PEROXIDE ONLY"; designs for venting and pressure relief devices must be approved by the Bureau of Explosives.

(g) Canceled.

4. In § 73.271 add paragraphs (a) (12), (13), and (14); cancel paragraphs (b), (c), and (d) (15 F.R. 8321, Dec. 2, 1950) (22 F.R. 2226, Apr. 4, 1957) (21 F.R. 3011, May 5, 1956) (21 F.R. 9357, Nov. 30, 1956) to read as follows:

§ 73.271 Phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.

(a) \* \* \*  
 (12) Spec. 5A or 5C (§§ 78.81 or 78.83 of this chapter). Metal barrels or drums. Authorized for phosphorus trichloride and thiophosphoryl chloride.

(13) Spec. MC 310 or MC 311 (§§ 78.330 or 78.331 of this chapter). Tank motor vehicles when tanks are clad with 20 percent Type 316 stainless steel. Authorized for phosphorus oxychloride only.

(14) Spec. MC 310 or MC 311 (§§ 78.330 or 78.331 of this chapter). Tank motor vehicles made from Type 316 stainless steel. Authorized for phosphorus trichloride only.

(b) Canceled.

(c) Canceled.  
 (d) Canceled.

**Subpart F—Compressed Gases; Definition and Preparation**

1. In § 73.308 paragraph (a) table, amend the entry "Vinyl chloride, inhibited" (20 F.R. 8103, Oct. 28, 1955) to read as follows:

§ 73.308 Compressed gases in cylinders.  
 (a) \* \* \*

Kind of gas	Maximum permitted filling density (see Note 12)	Cylinders (see Note 11) marked as shown in this column must be used except as provided in Note 1 and § 73.34 (a) to (e)
(Change) Vinyl chloride... (See Note 7).	Percent 84	ICC-4B150, without brazed seams; ICC-4BA225, without brazed seams; ICC-3A150; ICC-3AA150; ICC-25.

2. In § 73.314 paragraph (a) table, amend the entry "Vinyl chloride, inhibited" (22 F.R. 4791, July 9, 1957) to read as follows:

§ 73.314 Compressed gases in tank cars.  
 (a) \* \* \*

Kind of gas	Maximum permitted filling density, Note 1	Required type of tank car, Note 2
(Change) Vinyl chloride... (See Note 14.)	Percent 84 87	ICC-106A500, 106A500X, Note 12. ICC-105A200-W, Note 9.

3. In § 73.315 amend paragraph (a) (1) table; amend paragraph (h) table; amend paragraph (i) (2) table (24 F.R. 906, Feb. 6, 1959) (22 F.R. 7838, Oct. 3, 1957) to read as follows:

§ 73.315 Compressed gases in cargo tanks and portable containers.  
 (a) \* \* \*

Kind of gas	Maximum permitted filling density		Specification container required	
	Percent by weight (see Note 1)	Percent by volume (see par. (f) of this section)	Type (see Note 2)	Minimum design pressure (psig)
(Change) Vinyl chloride.....	84	See Note 7.....	MC-330...	150

(h) \* \* \*

Kind of gas	Permitted gauging device
(Change) Vinyl chloride.....	None.

(i) \* \* \*  
 (2) \* \* \*

Kind of gas	Minimum start-to-discharge pressure (psig)
(Change) Vinyl chloride.....	150

**Subpart G—Poisonous Articles; Definition and Preparation**

1. In § 73.332 add paragraph (d) (15 F.R. 8333, Dec. 2, 1950) to read as follows:

§ 73.332 Hydrocyanic acid, liquid (prussic acid) and hydrocyanic acid liquefied

(d) Spec. 105A500-W (§ 78.288 of this chapter). Tank cars. Tank cars having tanks which must be equipped with approved dome fittings and safety devices, and with cork insulation at least 4 inches in thickness. Tanks must be stenciled on both sides in letters not less than 2 inches high, "HYDROCYANIC ACID ONLY". Written procedure covering details of tank car appurtenances, dome fittings and safety devices, and marking, loading, handling, inspection, and testing practices shall be filed with and approved by the Bureau of Explosives before any tank car is offered for transportation of hydrocyanic acid.

2. In § 73.345 amend paragraph (a) (1) (15 F.R. 8334, Dec. 2, 1950) to read as follows:

§ 73.345 Exemptions for poisonous liquids, class B.

(a) \* \* \*  
(1) In glass or earthenware containers not over 1 quart capacity each, or in metal containers or polyethylene bottles not over 1 gallon capacity each, packed in strong outside wooden boxes or barrels.

3. In § 73.373 add paragraph (a) (4) (15 F.R. 8338, Dec. 2, 1950) to read as follows:

§ 73.373 Paranitraniline.  
(a) \* \* \*  
(4) In addition to specification containers prescribed in this section, paranitraniline may be shipped in bulk in strong, water-tight, metal-bodied covered hopper motor vehicles.

**Subpart I—Shipping Instructions**

In § 73.432 amend paragraph (a) (19 F.R. 8529, Dec. 14, 1954) to read as follows:

§ 73.432 Tank car shipments.  
(a) Tank cars containing flammable liquids or flammable poison gas having a flash point of 80° F. or below, except liquid road asphalt or tar, must not be offered for shipment unless originally consigned or subsequently reconsigned to parties having private-siding (see Note 1 of this section) or to parties using railroad-siding facilities which have been equipped for piping the liquid from tank cars to permanent storage tanks of sufficient capacity to receive contents of car.

**PART 74—CARRIERS BY RAIL FREIGHT**

In § 74.532 amend paragraphs (k) and (l) (5) (23 F.R. 2329, Apr. 10, 1958) (15 F.R. 8348, Dec. 2, 1950) to read as follows:

§ 74.532 Loading other dangerous articles.

(k) Nitrates, except ammonium nitrate having organic coating, listed in § 73.182(b) of this chapter must be loaded in clean closed cars, which shall be free of loose boards, cracks, holes, or exposed decayed spots. Interior of cars must be swept clean and be free of any projections capable of injuring bags when so packaged. Doors of cars must have tight closures. Ammonium nitrate or ammonium nitrate fertilizer, having no organic coating, ammonium nitrate mixed fertilizer, or ammonium nitrate-phosphate, in bulk may be loaded in clean covered hopper cars. Ammonium nitrate having organic coating must be loaded in all-wood box cars, or wooden box cars with steel roofs, or steel box cars with wooden floors and must not be loaded in all-metal cars. Journals and boxes must be in good condition. (See § 74.541(a) (1).)

(l) \* \* \*  
(5) Gas handlers. Each shipment of one or more carloads, as described in subparagraphs (1), (2), (3), and (4) of this paragraph, shall be accompanied by a crew of qualified gas handlers, supplied with equipment to handle leaks or other container failure, which will permit the escape of gas. Gas handlers will remain with the shipment during the entire time that it is in the custody of the carrier. Gas handlers will, in the event of leakage or escape of gas, make repairs and perform decontamination, if necessary. If they need assistance they will advise the carrier's representative as to the nearest Chemical Warfare Service Depot and aid required.

**Subpart C—Placards on Cars**

1. In § 74.542 add paragraph (b) (15 F.R. 8350, Dec. 2, 1950) to read as follows:

§ 74.542 "Poison gas" placards.  
(b) "Flammable poison gas" placards. "Flammable poison gas" placards as prescribed in § 74.556 must be applied to Class 105 tank cars containing hydrocyanic acid.

2. Add § 74.556 (15 F.R. 8352, Dec. 2, 1950) to read as follows:

§ 74.556 Flammable poison gas placard.  
(a) The "Flammable poison gas" placard must be of rectangular shape, measuring 13 by 17 inches, and must bear the wording as shown in the following cut; the printing must be in red with the

exception of name of contents which must be in black, as follows:

FLAMMABLE POISON GAS PLACARD  
(Reduced Size)  
17 inches

DO NOT REMAIN ON OR NEAR THIS CAR UNNECESSARILY

Notify shipper and Bureau of Explosives if necessary to transfer lading en route

FLAMMABLE POISON GAS

-----  
NAME OF CONTENTS

This car must not be next to a car placarded "Explosives".  
Beware of liquid and of gas leaking from tank or fittings.

WHEN LADING IS REMOVED THIS PLACARD MUST BE REVERSED.

13 inches

(b) The reverse side of such placards may bear the wording as prescribed for the "Flammable Poison Gas—Empty" placard. (See § 74.563).

**Subpart D—Unloading From Cars**

1. In § 74.560 amend paragraph (a) (19 F.R. 8529, Dec. 14, 1954) to read as follows:

§ 74.560 Tank car delivery.  
(a) Tank cars containing flammable liquids or flammable poison gas having a flash point of 80° F. or below, except liquid road asphalt or tar, must not be delivered unless originally consigned or subsequently reconsigned to parties having private-siding (see Note 1 of this section) or to parties using railroad-siding facilities which have been equipped for piping the liquid from tank cars to permanent storage tanks of sufficient capacity to receive contents of car.

2. In § 74.562 add paragraph (d) (15 F.R. 8353, Dec. 2, 1950) to read as follows:

§ 74.562 Removal of placards and car certificate after unloading.

(d) After flammable poison gas is unloaded from tank car, the party unloading the car must remove all shipping cards and "Flammable Poison Gas" placards from car. "Dangerous—Empty Flammable Poison Gas" placards detailed in § 74.563 must be applied to empty tank car.

3. In § 74.563 amend the heading and paragraph (a); add paragraphs (d) and (e) (23 F.R. 2329, Apr. 10, 1958) (15 F.R. 8353, Dec. 2, 1950) to read as follows:

§ 74.563 "Dangerous—Empty" placards.  
(a) "Dangerous—Empty" placards must measure 10¾ inches on each side

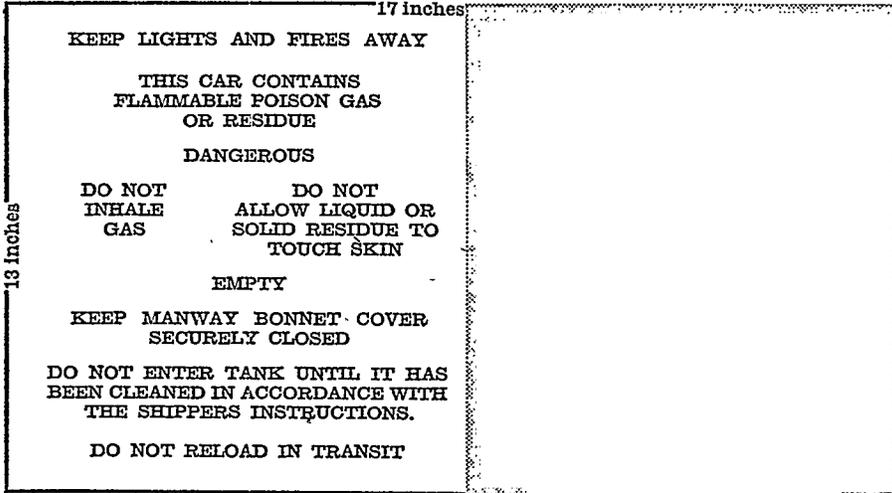
(see paragraph (d) of this section for "Flammable Poison Gas—Empty" placard). The printing must be as shown in the cuts in this section, in black on strong white paper, or on tag board designated commercially as 100 percent sulphate, weighing 125 pounds per ream, of sheets 24 inches by 36 inches, and

having a resistance of not less than 60 pounds per square inch, Mullen test.

(d) "Flammable Poison Gas—Empty" placard must be of rectangular shape, measuring 13 inches by 17 inches and must bear the wording as shown in the following cut:

"FLAMMABLE POISON GAS—EMPTY" PLACARD

(Reduced Size)



(e) The reverse side of such placards may bear the wording as prescribed for the "Flammable Poison Gas" placard. (See § 74.556.)

**Subpart E—Handling by Carriers by Rail Freight**

1. In § 74.582 amend paragraph (b) (15 F.R. 8354, Dec. 2, 1950) to read as follows:

§ 74.582 Movement to be expedited.

(b) No tank car loaded with flammable liquid, flammable poison gas or com-

pressed flammable gas shall be received and held at any point, subject to forwarding orders, so as to defeat the purpose of this section or of § 74.560.

2. In § 74.584 amend entire table in paragraph (a); amend paragraph (f) (21 F.R. 4433, June 23, 1956) (17 F.R. 4296, May 10, 1952) (22 F.R. 3926, June 5, 1957) (24 F.R. 907, Feb. 6, 1959) (21 F.R. 3013, May 5, 1956) to read as follows:

§ 74.584 Waybills, switching orders, or other billing.

(a) \* \* \*

	Label notation to follow entry of the article on the billing	Placard notation to follow entry of the article on the billing	Placard endorsement must be 3/8" high and appear on the billing near the space provided for the car number
For high explosives, initiating explosives, low explosives, and blasting caps or electric blasting caps more than 1,000 in quantity, class A.	None	"Explosives Placard"	"Explosives".
For explosive chemical ammunition containing class A poison gas.	Poison gas label	"Explosives and Poison Gas Placard"	"Explosives" and "Poison Gas".
For explosives, class B.	None	"Dangerous Placard"	"Dangerous".
For explosives, class C.	do	do	None.
For flammable liquids.	Red label	"Dangerous Placard"	"Dangerous".
For flammable solids.	Yellow label	do	Do.
For oxidizing materials.	do	do	Do.
For corrosive liquids.	White label	do	Do.
For compressed nonflammable gases in containers other than tank cars.	Green label	None	None.
For compressed nonflammable gases in tank cars.	None	"Dangerous Placard"	"Dangerous".
For compressed flammable gases.	Red gas label	do	Do.
For poisonous gases or liquids, class A.	Poison gas label	"Poison Gas Placard"	"Poison Gas".
For flammable poisonous liquids, class A, in tank cars.	None	"Flammable Poison Gas Placard"	"Flammable Poison Gas".
For poisonous liquids or solids, class B.	Poison label	"Dangerous Placard"	"Dangerous".
For tear gases, class C.	Tear gas label	None	None.
For radioactive materials, class D poison.	Radioactive material label	"Dangerous Radioactive Material Placard"	"Dangerous Radioactive material".
For tank cars filled with water or inert gas and last containing phosphorus.	None	"Caution—this car contains residual phosphorus and must be kept filled with (water) or (inert gas)".	"Caution—Residual Phosphorus".

(f) The car ticket, card waybill, running slip, envelope containing waybills, or any other billing for any loaded car which in this chapter should bear "Explosives", "Dangerous", "Dangerous—Radioactive material", "Poison Gas", or "Flammable Poison Gas" placards must have plainly stamped, or plainly written, on the face of such billing, near the car number, in letters not less than three-eighths of an inch high, the words "Explosives", "Dangerous", "Dangerous—Radioactive material", "Poison Gas", or "Flammable Poison Gas"; and for container cars must also show which of the containers loaded thereon contain dangerous articles.

3. In § 74.589 amend the introductory text of paragraph (b); amend the introductory text of paragraph (c); amend paragraph (h) (5); amend paragraph (j) (5); amend paragraph (k); amend paragraph (l); amend the introductory text of paragraph (m) and (m) (1) (22 F.R. 3927, June 5, 1957) (20 F.R. 953, Feb. 15, 1955) (15 F.R. 8356, Dec. 2, 1950) (21 F.R. 4433, June 23, 1956) to read as follows:

§ 74.589 Handling cars.

(b) *Placards on cars.* A car requiring car certificates and "Explosives", "Dangerous", "Dangerous—Radioactive material", "Poison Gas", "Flammable Poison Gas", or "Caution—Residual Phosphorus" placards under the provisions of this part shall not be transported unless such freight car is at all times placarded and certificated as required. Placards and car certificates lost in transit shall be replaced at next inspection point and those not required shall be removed.

(c) *Switching cars containing explosives, poison gas, or flammable poison gas or placarded trailers on flat cars.* A car placarded "Explosives", "Poison Gas", or "Flammable Poison Gas", or any flat cars carrying a placarded trailer shall not be cut off while in motion. No car moving under its own momentum shall be allowed to strike any car placarded "Explosives", "Poison Gas", or "Flammable Poison Gas", or any flat car carrying a placarded trailer nor shall any such car be coupled into with more force than is necessary to complete the coupling.

(h) \* \* \*  
(5) Any car placarded "Poison Gas" or "Flammable Poison Gas".

(j) \* \* \*  
(5) Any car placarded "Poison Gas" or "Flammable Poison Gas".

(k) *Position in freight train or mixed train of cars placarded "Poison Gas", "Flammable Poison Gas", or containing poison liquids, class A.* In a freight train or mixed train either standing or during transportation thereof, a car placarded "Poison Gas", "Flammable Poison Gas" or containing poison liquids, class A, shall not be next to other freight

cars placarded "Explosives" or cars placarded "Dangerous".

(l) *Position in freight train or mixed train of cars placarded "Explosives" or "Poison Gas", or both, and cars placarded "Flammable Poison Gas" when accompanied by cars carrying guards or gas handling crews.* A car requiring "Explosives" or "Poison Gas" placards, or both, and a car requiring "Flammable Poison Gas" placards, shall be next to and ahead of the car occupied by the guards or gas handling crews accompanying such car; except that when the car occupied by guards or gas handling crews is equipped with a lighted heater or stove it shall be the fourth car behind a car or cars requiring "Explosives" placards.

(m) *Cars containing explosives, poison gas, or flammable poison gas and tank cars placarded "Dangerous" in passenger or mixed trains.* Cars containing explosives, class A, poison gases or liquids, class A, or flammable poison gas, and tank cars requiring "Dangerous" placards shall not be transported in a passenger train. Such cars may be transported in mixed trains but only at such times and between such points that freight train service is not in operation.

(1) Cars containing explosives, class A, poison gases or liquids, class A, or flammable poison gas, and tank cars placarded "Dangerous" shall not be transported next to occupied cabooses or cars carrying passengers in mixed trains, except as provided in paragraph (l) of this section.

4. In § 74.597 amend the introductory text of paragraph (e) (22 F.R. 3927, June 5, 1957) to read as follows:

§ 74.597 Leaking packages of acid or poisons.

(e) *Radioactive materials—Poison class D.* In event of breakage of container, wreck, fire, or unusual delay involving cars placarded "Dangerous—Radioactive material" as prescribed in § 74.541(b), the car and any loose radioactive material must be isolated as far as possible from danger of human contact and no persons must be allowed to remain close to the car or contents needlessly until qualified persons are available to supervise handling. The shipper and the Bureau of Explosives should be notified immediately. Details involving the handling of radioactive materials in the event of a wreck may be found in Bureau of Explosives Pamphlet No. 22 covering "Recommended Practice for Handling Collisions and Derailments involving Explosives, Gasoline and Other Dangerous Articles."

**PART 77—SHIPMENTS MADE BY WAY OF COMMON, CONTRACT, OR PRIVATE CARRIERS BY PUBLIC HIGHWAY**

**Subpart A—General Information and Regulations**

In § 77.823 amend the introductory text of paragraph (b) and amend paragraph (b) (2); amend the introductory text of paragraph (d) (15 F.R. 8364, Dec.

2, 1950) (20 F.R. 8106, Oct. 23, 1955) to read as follows:

§ 77.823 Marking on motor vehicles and trailers.

(b) *Tank motor vehicles.* Every tank motor vehicle used for the transportation of any flammable liquid or flammable solid, regardless of the quantity being transported, or whether loaded or empty, shall be conspicuously and legibly marked on each side and the rear thereof, in letters at least 3 inches high on a background of sharply contrasting color, optionally, as follows:

(2) With the common name of the flammable liquid or flammable solid being transported.

(d) *Tank motor vehicles.* Every tank motor vehicle used for the transportation of any compressed gas, regardless of the quantity being transported, or whether loaded or empty, shall be conspicuously and legibly marked on each side and the rear thereof on a background of sharply contrasting color with a sign or lettering on the tank or motor vehicle with the words "COMPRESSED GAS," "FLAMMABLE COMPRESSED GAS," or "FLAMMABLE GAS," as appropriate in letters at least 6 inches high; and in letters at least 2 inches high with a commonly accepted name of the contents, such as "ANEYDROUS AMMONIA," "CARBON DIOXIDE," "CHLORINE," "NITROUS OXIDE," "SULFUR DIOXIDE," "LIQUEFIED PETROLEUM GAS," "PROPANE," or "BUTANE."

**PART 78—SHIPPING CONTAINER SPECIFICATIONS**

**Subpart F—Specifications for Fiberboard Boxes, Drums, and Mailing Tubes**

1. In § 78.205-25 amend paragraph (a); add § 78.205-35 (15 F.R. 8476, Dec. 2, 1950) to read as follows:

§ 78.205 Specification 12B; fiberboard boxes.

§ 78.205-25 Special box; authorized only for wet electric storage batteries of the glass cell type or synthetic resin (plastic) type.

(a) Must comply with this specification except as follows: Must be one-piece type of double wall corrugated fiberboard at least 275-pound test; must have linings to extend around four faces with joint in center of or at end of one face but at no time may joint of box and joint of liner coincide; lining to be of sufficient height to support vertical scorings of box; lining to be made of double wall corrugated board with minimum test of 275 pounds, top of battery or batteries to be protected by trays or scored sheets of corrugated fiberboard having minimum test of 200 pounds; bottom of batteries to be protected by minimum of one excelsior pad or one double wall corrugated fiberboard pad; when one or more batteries are packed in same carton, batteries must be separated by a minimum of one thickness of double wall corrugated fiberboard having minimum

test of 275 pounds; authorized gross weight 95 pounds.

§ 78.205-35 Special box; authorized only for aircraft type wet electric storage batteries.

(a) Box shall comply with this specification and shall be constructed of at least 275-pound test double-faced corrugated fiberboard. Inside corrugated fiberboard cushioning shall be provided as necessary to prevent short-circuits, breakage under normal conditions of transportation, and superimposed weights on links, covers, or other parts weaker than the battery case. Not more than one wet electric storage battery shall be packed in a box and gross weight shall not exceed 85 pounds.

2. In § 78.209-8 amend paragraphs (a) (2) and (3); in § 78.209-10 amend paragraph (a); in § 78.209-12 amend the introductory text of paragraph (b); in § 78.209-14 amend paragraph (a) (20 F.R. 8110, Oct. 23, 1955) to read as follows:

§ 78.209 Specification 12H; fiberboard boxes.

§ 78.209-8 Type authorized.

(2) Box to consist of full depth top and bottom sections completely telescoping. No inner lining tube required. Three variations are authorized: one with bottom slotted on ends and cover on sides; second, with both cover and bottom slotted on sides; and third, with sides and ends (both covers and bottom) not slotted, manufacturer's joint a side lap glued or stapled to end, closing flaps to form top and bottom of box with side closing flaps out and overlapping. (No change in Note 1.)

(3) Box to consist of 1-piece or 3-piece, without recessed heads, fitted with lining tube as prescribed in § 78.209-11, except that lining tube is not required for boxes used for shipment of electric blasting caps packed in accordance with § 73.66(g) (1) of this chapter. Flaps must butt or have full overlap except that inner flaps may overlap 1/2 inch.

§ 78.209-10 Joints.

(a) Lapped 1 1/2" and stitched at 2 1/2" intervals and within 1" of each end of joint; except for full depth telescope style boxes, body joints must be double-stitched (two parallel rows of stitches).

§ 78.209-12 Closing for shipment.

(b) For full telescope and 1-piece or 3-piece type boxes as prescribed in § 78.209-8 (a) (2) and (a) (3) by coating with adhesive at least 50 percent of the entire contact surface of the closing flaps or by one of the following methods:

§ 78.209-14 Special tests.

(a) *By whom and when.* By or for each plant making the boxes; at beginning of manufacture and at six-month intervals thereafter; on largest size, by weight. Smaller sizes need not be tested if they have the same or equivalent construction. Report of results, with all

pertinent data, to be maintained on file for one year; copy to be filed with the Bureau of Explosives.

3. In § 78.210-6 amend paragraph (a) (22 F.R. 7842, Oct. 3, 1957) (23 F.R. 7651, Oct. 3, 1958) to read as follows:

§ 78.210 Specification 12A; fiberboard boxes.

§ 78.210-6 Boxes authorized.

(a) Corrugated fiberboard boxes having gross weight not over 80 pounds of the following strengths are authorized:

Gross weight not over (pounds)	Corrugated fiberboard strength (Mullen or Cady test) minimum	
	Double- faced	Double- wall
20.....	200	200
50.....	275	209
80.....		275

4. In § 78.214-18 amend paragraph (a) (15 F.R. 8480, Dec. 2, 1950) to read as follows:

§ 78.214 Specification 23F; fiberboard boxes.

§ 78.214-18 Special tests.

(a) *By whom and when.* By or for each plant making the boxes; at beginning of manufacture and at six-month intervals thereafter; on largest size, by weight. Smaller sizes need not be tested if they have the same or equivalent construction. Report of results, with all pertinent data, to be maintained on file for one year; copy to be filed with the Bureau of Explosives.

5. In § 78.219-14 amend paragraph (a) (17 F.R. 1564, Feb. 20, 1952) to read as follows:

§ 78.219 Specification 23H; fiberboard boxes.

§ 78.219-14 Special tests.

(a) *By whom and when.* By or for each plant making the boxes; at beginning of manufacture and at six-month intervals thereafter; on largest size, by weight. Smaller sizes need not be tested if they have the same or equivalent construction. Report of results, with all pertinent data, to be maintained on file for one year; copy to be filed with the Bureau of Explosives.

**Subpart J—Specifications for Containers for Motor Vehicle Transportation**

In § 78.330-3 amend paragraph (a); in § 78.330-5 paragraph (a) amend footnote 3; in § 78.330-8 amend paragraph (a); in § 78.330-9 amend paragraph (a); in § 78.330-11 amend paragraph (a); in § 78.330-14 amend paragraphs (a) and (c) (18 F.R. 6782, Oct. 27, 1953) (15 F.R. 8554, 8555, Dec. 2, 1950) (22 F.R. 11038, Dec. 31, 1957) (22 F.R. 7848, Oct. 3, 1957) (21 F.R. 7611, Oct. 4, 1956) to read as follows:

§ 78.330 Specification MC 310; cargo tanks.

§ 78.330-3 New tank motor vehicles.

(a) Except as provided in § 78.330-4, every new tank motor vehicle acquired

by a motor carrier on or after June 15, 1940, for the transportation of any corrosive liquid shall comply with the requirements of specifications MC 310 or MC 311. A certificate from the manufacturer of the cargo tank, or from a competent testing agency, certifying that each such tank is designed and constructed in accordance with the requirements of either specification, shall be procured, and such certificate shall be retained in the files of the carrier during the time that such tank is employed in the transportation of corrosive liquids by him. In lieu of this certificate, if the motor carrier himself elects to ascertain if any such tank fulfills the requirements of either specification by his own test, he shall similarly retain the test data. Where such tanks are used for hydrogen peroxide in concentrations exceeding 52 percent by weight, such certificate or test data shall indicate that the tank complies with special provisions of this specification for that lading.

§ 78.330-5 Marking of cargo tanks.

(a) *Metal identification plate.* \* \* \*

\* Substitute "ICC SPEC-T-118", or "ICC, 7.5-S-1", or "ICC MC 310-H<sub>2</sub>O<sub>2</sub>", or "NO SPECIFICATION", as appropriate.

§ 78.330-8 Must comply with A.S.M.E. Code.

(a) Tanks built under this specification shall be designed and constructed in accordance with and fulfill all requirements of Section VIII of the Code for Unfired Pressure Vessels of the American Society of Mechanical Engineers, 1949, 1950, 1952 or 1956 editions, which are hereafter referred to as "the Code".

§ 78.330-9 Material.

(a) As specified in paragraphs U-12, U-13, and U-20 of the A.S.M.E. Code for Unfired Pressure Vessels, 1949 Edition, no revisions. Tanks may be constructed of ferrous materials listed in Table U-2 including the stainless steels or of nickel or nickel alloys as listed in Table U-3 of the Code. Use of other materials listed in Table U-3 may be authorized by the Commission upon submission of satisfactory supporting data. Materials for tanks transporting hydrogen peroxide over 52 percent by weight, must comply with the 1956 edition of the Code, but shall be limited to Aluminum Association Nos. 1060, 1260, 5254 and 5652. Other aluminum alloys may be authorized by the Commission upon submission of satisfactory supporting data.

§ 78.330-11 Joints.

All joints and seams formed in the manufacture of any cargo tank shall be made tight by welding, riveting, riveting and welding, brazing, or riveting and brazing, at the option of the motor carrier, subject to the limitation that any of the aforesaid methods are permissible only when any one of them or combination as used in the tank is not subject to adverse action by the nature of the corrosive liquid which is to be transported in such tank provided that joints in tanks for hydrogen peroxide of concentration exceeding 52 percent shall be

made by welding only, with subsequent heat treating or peening permissible.

§ 78.330-14 Tank outlets.

(a) *No bottom outlets.* Except as provided hereinafter, no cargo tanks, except those used for the shipments of sludge acid or alkaline corrosive liquids, and no tanks for the transportation of hydrogen peroxide in concentrations exceeding 52 percent by weight, shall have bottom discharge outlets; outlets leaving the cargo tank at or near the top but having the end of the outlet below the top liquid level shall not be considered as bottom outlets but such outlets must be equipped with a shut-off valve at the point of outlet from the cargo tank and a shut-off valve or a blank flange or screw-on cap at the discharge end of the outlet and must not be moved with any of the contents in the line beyond the point where it leaves the cargo tank. The valve at the tank shall be protected against damage in the event of overturn. Cargo tanks used for the transportation of sludge acid and/or alkaline corrosive liquids may be equipped with bottom outlets when the products to be transported are too viscous to be unloaded through a dome connection or top outlet provided such bottom outlets are equipped with an effective and reliable shut-off valve located inside the shell of the tank, tank compartment outlet, or sump if the sump is integral with the tank.

(c) *Bottom wash-out chambers.* Except as specified in paragraph (c) (1) of this section tanks may be equipped with bottom washout chambers. Bottom washout chambers shall be of metal not subject to rapid deterioration by the lading and shall be provided with a liquid-tight closure at its lower end. If used for loading or unloading, they shall be equipped with a valve or plug at the upper end.

(1) Bottom washout chambers are not permitted on tanks used for the transportation of hydrogen peroxide of concentration exceeding 52 percent by weight.

[F.R. Doc. 59-5784; Filed, July 13, 1959; 8:47 a.m.]

## Title 50—WILDLIFE

### Chapter I—Fish and Wildlife Service, Department of the Interior

#### SUBCHAPTER F—ALASKA COMMERCIAL FISHERIES

#### PART 104—BRISTOL BAY AREA

#### Additional Fishing Time in Nushagak and Egegik Districts

*Basis and purpose.* The red salmon runs in the Nushagak District of Bristol Bay continue to be sufficiently strong so as to permit additional fishing time. Also, the red salmon runs in the Egegik District are now arriving in sufficient volume to warrant additional fishing time.

Therefore, § 104.9, as amended July 8, 1959, is further amended permitting

fishing in the Nushagak District from 9 a.m. to 9 p.m. Friday, July 10, 1959, and in the Egegik District from 6 a.m. to 6 p.m. Saturday, July 11, 1959.

Since immediate action is necessary if the benefits of these relaxations are to be realized, notice and public procedure on this amendment is not in the public interest, and it shall become effective upon publication in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.).

(Sec. 1, 43 Stat. 464, as amended; 48 U.S.C. 221)

Dated: July 10, 1959.

A. W. ANDERSON,  
Acting Director

Bureau of Commercial Fisheries.

[F.R. Doc. 59-5832; Filed, July 10, 1959; 3:40 p.m.]

**Chapter III—International Regulatory Agencies (Fishing and Whaling)**

**SUBCHAPTER B—INTERNATIONAL WHALING COMMISSION**

**PART 351—WHALING**

*Basis and purpose.* Section 13 of the Whaling Convention Act of 1949 (64 Stat. 421, 425; 16 U.S.C., 1952 ed., 916k), the legislation implementing the International Convention for the Regulation of Whaling signed at Washington, December 2, 1946, by the United States of America and certain other Governments, provides that regulations of the International Whaling Commission shall be submitted for publication in the FEDERAL REGISTER by the Secretary of the Interior. Regulations of the Commission are defined to mean the whaling regulations in the schedule annexed to and constituting a part of the Convention in their original form or as modified, revised, or amended by the Commission. The provisions of the whaling regulations, as originally embodied in the schedule annexed to the Convention, have been amended several times by the International Whaling Commission. The whaling regulations, as last amended by the Commission in October 1957 were edited to conform in numbering, internal references, and similar items to regulations of the Administrative Committee of the Federal Register and were published in their entirety as Part 351, Title 50, Code of Federal Regulations, without change in the substantive provisions (23 F.R. 3063, May 8, 1958).

On October 6, 1958, and January 29, 1959, amendments to the whaling regulations made by the Commission at its tenth meeting, at The Hague, 1958, became effective. Since these amendments effect only minor changes in the regulations as published on May 8, 1958, republication of the regulations in their entirety is not necessary. Therefore, publication is made at this time of the changes in the regulations accomplished by the Commission amendments which came into operation on October 6, 1958, and January 29, 1959.

The provisions of the whaling regulations are applicable to nationals and whaling enterprises of the United States.

Amendments to the whaling regulations are adopted by the International Whaling Commission pursuant to Article V of the Convention without regard to the notice and public procedure requirements of the Administrative Procedure Act (5 U.S.C. 1001). Accordingly, in fulfillment of the duty imposed upon the Secretary of the Interior by section 13 of the Whaling Convention Act of 1949, the whaling regulations published as Part 351, Title 50, Code of Federal Regulations, as the same appeared in 23 F.R. 3063, May 8, 1958, are amended as set forth below.

Dated: July 7, 1959.

FRED A. SEATON,  
Secretary of the Interior.

1. Paragraphs (a) and (b) of § 351.6 are amended to read as follows:

§ 351.6 Limitations on the taking of humpback whales.

(a) It is forbidden to kill or attempt to kill humpback whales in the North Atlantic Ocean for a period ending on November 8, 1964.

(b) It is forbidden to kill or attempt to kill humpback whales in the waters south of 40° South Latitude between 0° Longitude and 60° West Longitude for a period ending on November 8, 1964.

2. The proviso to paragraph (a) of § 351.8 is amended to read as follows: "Provided, That in the season 1958-59, the number of baleen whales taken as aforesaid shall not exceed fourteen thousand five hundred blue whale units."<sup>1</sup>

3. The proviso to paragraph (c) of § 351.8 is amended to read as follows: "Provided, That when the number of blue whale units is deemed by the Bureau of International Whaling Statistics to have reached 13,500 (but 13,000 in the season 1958-59) notification shall be given as aforesaid at the end of each day of data on the number of blue whale units taken."<sup>2</sup>

(Art. V, 62 Stat. 1718)

[F.R. Doc. 59-5783; Filed, July 13, 1959; 8:46 a.m.]

**PROPOSED RULE MAKING**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**[7 CFR Parts 960, 975 I]**

[Docket Nos. AO-179-A17, AO-253-A4]

**MILK IN CLEVELAND, OHIO, AND AKRON-STARK COUNTY, OHIO, MARKETING AREAS**

**Decision on Proposed Amendments to Tentative Marketing Agreement and to Order**

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Cleveland, Ohio, on February 24-28, 1959, pursuant to notices thereof issued on December 22, 1958 (23 F.R. 10373), and January 14, 1959 (24 F.R. 428).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on June 10, 1959 (24 F.R. 4842), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues on the record of the hearing relate to:

1. Merger of the orders into a single regulation;
2. Extension of the marketing area;
3. Provisions of the merged order with particular respect to

(a) Milk to be regulated and to be pooled;

(b) Classification and accounting provisions;

(c) Class prices;

(d) Location adjustments;

(e) The quota plan;

(f) Producer butterfat differential; and

(g) Administrative provisions.

*Findings and conclusions.* The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Combination of orders.* Order No. 60 regulating the handling of milk in the Akron-Stark County, Ohio, marketing area and Order No. 75 regulating the handling of milk in the Cleveland, Ohio, marketing area should be merged into a single regulation. The marketing area of the consolidated regulation should be redesignated as the "Northeastern Ohio marketing area".

The very substantial competition in procurement and sales of milk between

<sup>1</sup> The proviso to paragraph (a) of § 351.8 reflects a restriction on the taking of blue whale units as amended by the International Whaling Commission at its Tenth Meeting, at The Hague, 1958, which came into operation on January 29, 1959. The amendment was objected to by Norway, the Netherlands, the United Kingdom, Japan, and the U.S.S.R. within the prescribed period, and the amendment, therefore, is not binding on those countries.

<sup>2</sup> The proviso to paragraph (c) of § 351.8 reflects a restriction on the taking of blue whale units as amended by the International Whaling Commission at its Tenth Meeting, at The Hague, 1958, which came into operation on January 29, 1959. The amendment was objected to by Norway, the Netherlands, the United Kingdom, Japan, and the U.S.S.R. within the prescribed period, and the amendment, therefore, is not binding on those countries.

dealers regulated under the Cleveland order and those regulated under the Akron-Stark County order has already been recognized by providing identical Class I prices under the two orders. These prices are adjusted for supply-sales relationships on the basis of the total producer receipts and Class I sales of the two markets. Class II and Class III prices are also identical. Identical provisions now apply also with respect to the shipments supply plants must make to achieve or retain pool status. Identical quota plans are incorporated in the orders as a method of distributing returns to producers. Many other order provisions are closely aligned.

This close alignment of prices and provisions is necessary because substantial volumes of milk priced under each order have been sold in the marketing area of the other order. It is presently estimated that 20 percent of all Class I milk sold in the Akron-Stark County area is distributed from plants under the Cleveland order. Prior to July 1957, a substantial volume of milk was sold in the Cleveland area by an Akron-Stark County handler. Since that date, this handler's sales in Cleveland have exceeded those in the Akron-Stark County area and as a consequence he now sells Cleveland milk in the Akron-Stark County area. Other Cleveland handlers have substantial sales in the Akron-Stark County area. One handler with multiple plants under the Cleveland order also has plants in Akron and Canton subject to the Akron-Stark County order.

The Akron-Stark County milk procurement area is wholly encompassed within that of the Cleveland market, and represents a substantial part of the area from which milk is delivered directly from producers' farms to plants bottling milk for the Cleveland market. Inspection requirements of the markets are substantially the same so that producers shift readily from one to the other. Plant inspections are accepted on a reciprocal basis without dual inspection.

Consolidation of the regulations will provide stability to producers by reflecting in one uniform price the fluid milk sales of all handlers rather than dividing them into two pools. There was no opposition expressed to the merger proposed by four of the larger cooperative associations representing producers under the two orders. It is concluded that a single regulation (an amended Order No. 75) should replace the separate orders. The combined marketing area may appropriately be designated the "Northeastern Ohio marketing area".

To accomplish the merger effectively and most equitably the assets in the custody of the market administrator in the administrative, marketing service, and producer-settlement funds under the Akron-Stark County order should be merged with assets in similar funds under the Cleveland order and any liabilities of such funds of the individual orders should be paid from the new funds so created. To distribute such funds under one order to producers and handlers under that order would unduly burden the producers and handlers now

regulated by the other order. To distribute the funds under both orders and again accumulate the necessary reserves would entail considerable administrative detail to no good purpose.

2. *Marketing area.* Two townships in Medina County should be added to the marketing area. Proposals to add the area not now regulated in Lake and Ashtabula Counties, Tuscarawas County, one additional township in Medina County and nine townships in Wayne County should not be adopted on the basis of this record.

Of four proposals to merge the marketing area included in the notice of hearing, that to add those portions of Lake and Ashtabula Counties not now included in the marketing area brought forth the bulk of the testimony. The Cleveland marketing area presently includes three townships and the City of Painesville in Lake County and the City of Ashtabula in Ashtabula County. Five townships in Lake County and 28 in Ashtabula County would have been added (in whole or in part) by the proposals.

Cleveland handlers with plants in or near the presently regulated portions of these two counties assert that they have substantial sales in the unregulated portion of these counties and that their unregulated competitors have procurement advantages. The presently regulated handlers do have the predominance of Class I sales in Lake County and in the northern portion of Ashtabula County, exclusive of the City of Conneaut and its immediate vicinity. Only plants located in or in the vicinity of Conneaut are permitted to sell milk in that city. In the southern portion of Ashtabula County distribution by unregulated handlers predominates.

The record fails, however, to support the contention of procurement disadvantage to the regulated handlers. Proponents failed to show any specific paying prices that would substantiate the claimed lower costs to unregulated handlers selling in those portions of Lake and Ashtabula Counties not now in the Cleveland marketing area.

To extend the area as proposed would either price and pool a part of the Youngstown supply for which a cooperative association has negotiated class prices for a long period of years, or in the alternative would require dealers to stop deliveries to areas they have served for a number of years. In view of the lack of evidence of competitive disadvantage and certain positive testimony that some larger unregulated dealers selling in the area now enjoy no such advantage, it is concluded that the proposal should not be adopted on the basis of this record.

No evidence was offered in support of a proposal to include Tuscarawas County in the marketing area. This proposal is therefore denied.

Wadsworth and Sharon Townships in Medina County should be added to the marketing area. The City of Wadsworth, with a population of approximately 10,000 people, adjoins the present Akron-Stark County area and is wholly served by handlers presently regulated. Milk sales in Sharon Township are like-

wise wholly served by regulated dealers, and inclusion of Wadsworth Township would surround Sharon Township by regulated area. It is concluded that these two townships should be included in the marketing area.

The proposal to extend the area into nine townships in Wayne County and one additional township in Medina County would bring under regulation at least one additional handler whose area of distribution is not clearly defined on the record. The proponent handler operates a plant located in the area proposed, but it is regulated on the basis of sales in the present marketing area. This handler also has a larger volume of sales in Wadsworth than any other dealer. His proposal to include the remaining territory in which he sells should not be adopted at this time.

3. *Order provisions.* The majority of the provisions of a milk order apply to the individual operations of handlers in determining the classification and minimum value of receipts of milk from producers by each handler. The effects of similar provisions of such nature in two separate orders are not changed when the two orders are combined into a single regulation. The close alignment of numerous order provisions between the Cleveland and Akron-Stark County orders has already been mentioned. Those provisions with respect to which there are substantial differences or for which changes were proposed in the hearing are discussed below:

(a) *Milk to be regulated and pooled.* As the result of a recent amendment to the Akron-Stark County order the conditions under which plants qualify their receipts for pooling are substantially the same under the two orders. The Cleveland order permits a handler operating two or more supply plants to operate such plants as a unit on the basis of aggregate receipts and shipments. Both orders exempt from pricing and pooling the receipts of distribution plants located outside the marketing area with daily average distribution of less than 300 points of Class I milk in the area. The Cleveland order does not regulate in any way the operations of a plant which distributes only cream in the marketing area. The Cleveland order, in addition, does not price nor pool the receipts of any distributing plant unless half or more of its receipts of approved milk are distributed on routes, but not necessarily in the marketing area. The handler operating such a plant is required to pay compensatory payments on his Class I sales in the area.

The aggregate performance provision for supply plants now in the Cleveland order should be included in the merged order to permit continuation of existing supply relationships. Likewise, the requirement that distributing plants have fluid distribution of half or more of their receipts is needed to distinguish those plants primarily engaged in fluid distribution from those which should be required to qualify for pool participation through the shipments required of supply plants.

It was proposed to extend regulation to plants which might confine their in-area distribution to cream or cottage cheese

(a Class II product). Regulation should not be extended to those plants which distribute only Class II products or bulk cream. To price and pool the receipts of such plants might include in the marketwide pool a considerable volume of milk not qualified for distribution as fluid milk. Applicable location adjustment would in most cases equal or exceed the 30 cents per hundredweight by which the Class II price exceeds that of Class III milk.

The cooperative associations proposing the combined order also proposed that provision be made for pooling receipts of a supply plant operated by a cooperative association on the basis of overall performance of the association rather than shipments from the plant. Two of these associations jointly have recently acquired and are now operating three plants which have been regularly qualified as Cleveland supply plants for a number of years. It was proposed that a plant operated by a cooperative association be pooled if two-thirds of its member producers' milk had been delivered to the pool plants of other handlers during six of the seven preceding months.

It is claimed that the three plants are now operated as auxiliary supply and surplus disposal operations which supplement the principal function of the cooperative in supplying the needs of other handlers. Under the present shipping requirements of 30 percent or more of receipts during the months of August through January, the association has been unable to receive some production excess to the needs of bottling handlers.

Two of the plants (one equipped only for receiving milk) are relatively near the market within the area at which no location adjustments will apply in the combined order. The third is 225 miles from Cleveland. It appears that the principal function for which special consideration may be given is that incident to surplus disposal for bottling plants. Only plants relatively near the market can perform this function. It is concluded that cooperative plants whose receipts may be pooled without meeting stated shipping performance requirements should be limited to those within the zone for which no location adjustments are applicable. The association requirement in lieu of such shipments should be that during the preceding six-month period, two-thirds of the producer member milk of the association, exclusive of that delivered to other supply plants, have been received at pool bottling plants. Such requirements will limit the pooling privilege to those situations in which it appears that a cooperative plant can perform a service to the market that might be limited by shipping requirements. The extent to which pool bottling plants are receiving milk in bulk tanks from farms has reduced the demand for supply plant milk from the nearby plants, and has increased the need for readily available surplus outlets in this area.

It was suggested at the hearing that a "call" provision under which the market

administrator might require shipments up to a specified percentage of receipts in periods of short supply might be included in the order to insure that any cooperative plants afforded pooling privileges supply the needs of the market to the fullest extent possible. The record is not clear, however, as to whether the proposed "call" provision would affect all supply plants or only the qualified cooperative plant, nor the mechanics by which the market administrator might determine the shipments to be required. Neither does the record provide a basis for integration of such requirements with specific minimum shipments through which any plant may now qualify. For these reasons a suitable "call" provision cannot be provided on the basis of this record.

The Akron-Stark County order provides for pooling milk of producers diverted to nonpool plants for the account of a handler or cooperative association in all months of the year, while the Cleveland order restricts this privilege to the months of April through July. By suspension action such diversion has also been permitted under the Cleveland order during January through March in each of the years 1958 and 1959. Weekly schedules of plant operations and distribution of sales throughout the week now make it desirable that diversion be permitted in all months of the year. Producers proposed that the period for which a single producer's milk might be diverted by a proprietary handler be limited to 15 days in each month but that there be no limit on the diversion by cooperatives. This proposal should not be adopted. While the record indicates the desirability of incorporating in the order some standard of association with the market that would determine the producers eligible to retain pool status on milk diverted to nonpool plants by either a cooperative association or a proprietary handler, it does not provide the detail necessary to determine the standard that would be appropriate. No pressing problems have so far arisen under the Akron-Stark County provisions or under the Cleveland order when the limitations were suspended. Should experience show the need to limit diversion to nonpool plants or to define the producers eligible for diversion the matter may be considered in a future hearing.

In view of diversions that now take place between plants regulated by the North Central Ohio and plants regulated by the Cleveland order, the order should exclude from the definition of producer those farmers who retain status as producers under another order when their milk is diverted to a pool plant.

(b) *Classification and accounting.* With the exception of eggnog the products classified as Class I are essentially the same in the present orders. There are, however, differences in transfer, allocation and accounting provisions which affect the volume of producer milk paid for in each class. Changes in classification and accounting provisions were pro-

posed that are not included in either order.

Eggnog is essentially the same as ice cream mix, a Class III product, and should be classified in the same class. Health ordinances do not require eggnog to be made from Grade A milk.

Fluid milk products disposed of in bulk to commercial food processing establishments for use in food products prepared for general distribution, rather than consumption on the premises, should be Class III milk. This is the applicable classification under the Akron-Stark County order; under the Cleveland order such disposition is Class I milk. Grade A milk is not required for use in these products.

Handlers proposed that sour cream and bulk sweet cream be classified as Class II milk. The health department of the City of Cleveland issues cream permits to plants which are not permitted to supply milk for fluid use in the city. Under these permits bulk sweet cream, and packaged sour cream are distributed without a Grade A label through brokers and jobbers without being subject to regulation. To regulate such plants could result in including in the pool a large volume of milk which would not qualify for the fluid needs of the market. If bulk sweet cream were classified as Class II, while packaged sweet cream were classified as Class I, serious administrative difficulties would be encountered in correctly establishing the classification of cream sales. A considerable portion of the bulk sweet cream sales that handlers cite as being from unregulated plants are to commercial food processing plants for which Class III utilization is provided. In view of these circumstances the proposal to classify as Class II sweet cream disposed of in bulk is denied.

Sour cream should be classified in Class II. The Cleveland and Akron-Stark County order presently classify sour cream in Class I. The health department of the City of Cleveland does not require that sour cream distributed in the marketing area carry a Grade A label, whether in bulk or packaged form. The majority of the sour cream distributed in the marketing area from unregulated sources is in packaged form. The proposed Class II classification of all sour cream will create no administrative problem such as with the bulk sweet cream and will allow regulated handlers to compete for sales of this product.

Provisions similar to those of the Akron-Stark County order should be included to classify inventories of fluid milk products (products which either usually become Class I upon disposition, or are unprocessed milk, skim milk or cream) as Class III utilization subject to a further charge if allocated to a higher utilization in the following month. Such inventories must enter into the accounting for current receipts and utilization. Uniformity of minimum prices to handlers and simplicity of accounting are achieved if, so far as possible, Class I utilization in each month is assigned to current receipts of producer milk.

Classification of month end inventories at the lowest class of use and allocation of beginning inventories in series beginning with the lowest class furthers this objective. Should opening inventory be allocated to a higher class utilization, provisions are included to equalize prices with those which apply to current receipts of producer milk or other source milk, as applicable.

In order that Class I utilization may first be assigned to current receipts of producer milk, the definition of other source milk includes any nonfluid milk products reprocessed or converted into other products. Heretofore, the Cleveland order has required that milk in such products be reclassified; this involves determination of the months of receipt. Under this system and other language of the order, handlers receiving nonfluid milk products made from producer milk have been treated differently from those reprocessing other source nonfluid milk products for fortification of Class I products by addition of nonfat milk solids. Defining all such products as other source milk, whether made in a pool plant from producer milk or purchased from other sources, will eliminate such difference in treatment.

It was proposed in this connection that concentrated skim milk products used for fortification of a Class I product or in a Class II product be classified on a product pound basis. It was asserted that a decline in recent years in the average nonfat solids content of producer milk receipts required addition of solids to certain skim milk products. The proposal was designed to restrict the cost of such products to a volume of skim milk in producer milk equal to the volume of fortified milk sold, rather than the volume required to produce the solids disposed of as fortified milk. For accounting purposes it is necessary that receipts and disposition be accounted for on the same basis. For some other products, such as reconstituted milk, the volume to be considered must include all the water originally associated with the concentrated solids. This is the only basis upon which uniform accounting may be accomplished. Consideration may be given, however, to the classification to be accorded the skim milk equivalent of concentrated solids used in fortification.

Health regulations require that solids used for fortification be from Grade A milk. There are adequate supplies of producer milk in the Northeastern Ohio market to provide the solids required for fortification and facilities for concentration of such solids. The skim milk equivalent of such solids should be Class I utilization on the same basis as that of the solids in the producer skim milk to which they are added.

Cream should be deleted from the products classified as Class I milk when transferred to a nonpool plant more than 265 miles from Cleveland. Because of its concentrated form, cream is often moved long distances for manufacturing use.

With respect to the applicable rules for classification of transfers to nonpool plants within 265 miles, the Cleveland

order at present permits classification in any class claimed for which there is equivalent use in the nonpool plant. The Akron-Stark County order assigns all transfers to nonpool plants, wherever located, to the highest class of use by the nonpool plant in excess of its receipts from its regular dairy farm supply. Cooperatives proposed in the notice of hearing that the Cleveland transfer rules apply. At the hearing it was suggested that the classification of milk transferred to nonpool plants might be at the highest class of use in the nonpool plant. The record fails, however, to explore in sufficient detail the circumstances under which movements of milk to nonpool plants now take place to provide a basis for substantial change in present provisions. In view of the substantially greater volume of milk that is currently being classified under the Cleveland provisions, the principle of equivalent use should continue until there is opportunity for more detailed consideration at a future hearing. Modification should be made, however, to recognize the possibility that there may be transfers to a single nonpool plant from more than one pool plant, and from plants regulated under other orders, and to require use equivalent to the total of all such movements.

The Cleveland order presently permits division of the shrinkage allowance with respect to bulk movements between pool plants. The amended order provides that in all such cases there be .5 percent shrinkage allowance to the transferring plant and 1.5 percent to the transferee plant. This more nearly represents normal experience in such transactions.

It was proposed that fluid milk products in packaged form received from a plant subject to another Federal order be deducted from the Class I disposition of the receiving plant. Such a provision is now in the Akron-Stark County order. It was contained in the Akron order before it was merged with the Stark County order to form the present regulation. At that time it recognized a long standing arrangement between an Akron dealer and a Stark County dealer. Presently no such movements are occurring. A plant of the handler proposing retention of the provision has, however, as of January 1959 been transferred from regulation of the Cleveland order to that of the North Central Ohio order. Certain products packaged at this plant had up to that time been distributed in the Cleveland marketing area through another plant of the same handler. This handler has other plants under the Cleveland order at which these products can and are being processed. Additional such plants of the same handler will be included under the same regulation by the action to combine orders. There appears in this case no economic reason to provide for Class I sales to be assigned as proposed.

A proposal to permit a handler to elect to have his obligations computed on more than one accounting period within a month should not be adopted on the basis of this record. Supply conditions in the Northeastern Ohio market are not now such that handlers need fear shortages in parts of months. The

order combination herein effected makes the supply plant milk which heretofore has been producer milk only at Cleveland plants also producer milk at Akron and Stark County plants, and will thus diminish the likelihood that producer milk will not be available.

A proposal that compensatory payments on unpriced other source milk allocated to Class I milk apply only when the market supply of producer milk for the month exceeds 120 percent of Class I sales, rather than 110 percent as presently provided, should not be adopted. However, in view of the provisions made for diversion to nonpool plants—in all months, a provision now in the Akron-Stark County order should be included with respect to the computation of the level of market supply that determines the applicability of such payments. Under this provision milk diverted to nonpool plants for the account of a cooperative association is included in the computation only if the association furnishes evidence that such milk was offered to handlers at order prices. Such a provision discourages unnecessary diversion when market supplies approach minimum reserve levels.

(c) *Class prices*—(1) *Class I price*. The Class I differentials and supply-demand adjustment should be changed to modify the seasonal pattern without substantial change in the annual average level of the Class I price.

The Class I price applicable to both orders is now determined by adding to a basic formula price \$1.40 for the months of February through July and \$1.85 for other months. An adjustment is then made based on the deviation from an established norm of the ratio of milk supplies to Class I sales in the most recent two-month period.

The seasonal reduction of differentials in February has not been fully effective in either 1958 or 1959. Northeastern Ohio is an area of severe winters which do not permit reduction in production costs until approximately April. Dealers are reluctant to change resale prices at this season. Producers proposed that the Class I differential be uniform for all months; handlers proposed that a higher rate prevail August through March and a seasonally lower rate for the other four months.

Milk supplies have increased faster than Class I sales from 1957 to 1958; for 1957 supplies were 132 percent of sales and for 1958, 139 percent. Under these circumstances an increase in the annual average of the Class I differential which would make any significant increase in the level of the Class I price is not appropriate under the standards of the Act. The handler proposal that the differential be \$1.35 for the months of April through July and \$1.80 for other months approximates the present level and should result in no increase in producer prices with the classification changes proposed herein. It should be adopted.

A continued change in the pattern of production in the market requires adjustment in the seasonal pattern of standard utilization percentages used in the supply-demand adjuster. While the

present utilization percentages reflect to some extent the changes in seasonality that began in 1956, they fail to reflect the full extent to which the variation in utilization between fall and spring seasons has narrowed. They should be revised as follows to reflect the average three-year (1956-1958) experience:

	Present standard	Revised standard
January	123	128
February	126	128
March	129	128
April	132	129
May	135	130
June	144	140
July	149	148
August	144	141
September	131	127
October	125	126
November	123	128
December	122	130

The month listed is in each case that for which a price is being computed so that the percentages opposite are those of the two-month period immediately preceding. The annual average of these percentages is 132, the same as the current standard.

(2) *Class III price.* The Class III price should not be revised.

The Class III milk price in the Cleveland and Akron-Stark County orders is determined by using the basic formula price which is the higher of a midwest condensery price or a butter-powder formula price.

Wayne Cooperative Milk Producers, Inc. proposed that the Class III milk price should be the basic formula price less 20 cents during the months of March, April, May and June. This proposal was modified at the hearing to one that would allow a 5-cent credit on each pound of butterfat that was used in the manufacture of butter during the months. The reason given was that at the present Class III price level during the flush months it has had difficulty in handling surplus milk without financial loss. A loss incurred in the production of butter and nonfat dry milk powder amounting to about 20 cents per hundredweight of milk is claimed.

In opposing, a cooperative association testified that a reduction in the Class III price would reduce returns to producers. It was also claimed that a low Class III price serves to encourage plants with manufacturing facilities to carry more than adequate reserve supply to insure the fluid needs of the market.

In 1958, 7.51 percent of the total butterfat received in producer milk under the Cleveland and Akron-Stark County orders was made into butter, and 4.18 percent was used to make hard type cheese. Both these products are purchased under the Government price support program at prices designed to reflect a single national average level of prices to dairy farmers for manufacturing milk. Decreasing the minimum price of butterfat used to manufacture butter would require consideration of similar action with respect to the butterfat used for making cheese. Milk used to produce hard cheese in 1957 and 1958 represented 1.5 and 3.2 percent of producer receipts, respectively. Official notice is taken of the monthly statistics

published by the market administrator with respect to the disposition of receipts by pool handlers for the years 1957 and 1958.

Market supplies have been handled in recent years without indication of there being "distress milk" on the market. The cooperative association that opposed reduction of the Class III price has disposed of a substantial volume of milk to nonpool plants in the past year. Other cooperative associations which operate surplus disposal plants offered no testimony in support of the proposal.

The present Class III price is in good alignment with the average prices paid farmers in the milkshed States of Ohio, Michigan and Indiana for milk used for comparable products. Prices are reported for all three States for milk bought by condenseries primarily for evaporated milk and for milk used in making American cheese; prices are reported for Ohio and Michigan for milk used in making butter and creamery by-products. For 1958 the annual average Class III price, adjusted to the reported butterfat test in each instance, exceeded that of four of these series and was less than the average price of the other four. The differences ranged from one to ten cents per hundredweight with the Class III price exceeding the simple average of the eight series by two cents.

In view of the above facts the Class III price as now determined in Cleveland, Akron-Stark County reflects an appropriate value for milk used to manufacture dairy products and should continue to be used to determine the Class III price in the attached order.

(d) *Location adjustments.* Location adjustments to handlers and producers at a rate presently provided in each order should apply with respect to milk received at pool plants located 40 miles or more from the Public Square in Cleveland and 27.5 miles or more from the nearer of the City Halls in Akron or Canton.

The Cleveland order presently provides location adjustments at all pool plants located 40 miles or more from Cleveland. The Akron-Stark County order provides such adjustments at plants located 40 miles or more from the nearer of Cleveland, Akron or Canton. The rate at any plant beyond these points is identical, and is based on the distance from Cleveland. Four plants presently regulated under the Cleveland order are more than 40 miles from Cleveland but less than 40 miles from the nearer of Akron or Canton. One of these is in the immediate vicinity of a bottling plant which has been regulated at the full f.o.b. Akron-Stark County prices since the beginning of regulation in Akron. This Cleveland plant and a receiving station associated with it which is similarly situated with respect to the 40-mile limit are operated by a cooperative association and, if in the zone of no location, will be eligible for pooling under the provisions included for "standby plants" operated by cooperative associations. The other two plants are farther removed from bottling plants presently regulated under the Akron-Stark County order, and must

rely on shipments to bottling plants to maintain pool qualification. Without the applicable location adjustment the handlers operating these plants may not be able to compete with other supply plants. These plants are each approximately 30 miles from the nearer of Akron or Canton. A zone of no location adjustment extending 40 miles from Cleveland and 27.5 miles from the nearer of Akron or Canton appears appropriate for the situation at this time. No proposal was made to alter the rates of location adjustment beyond adjustment of the differing areas for which no rates apply under the two orders.

Provisions should also be made to define "reload point" at which location adjustments would apply with respect to milk regularly transferred at such points from one bulk tank to another in the course of movement from farms to a milk plant. Bulk tank handling methods permit delivery of milk to plants at considerable distances from the farms of producers. Transfer of milk in the country from farm pickup tanks to larger tanks facilitates economical movement over longer distances. The Cleveland Board of Health has established standards for installations at which such transfer may be made. These include a covered building and tank washing facilities. Producers whose milk is received at distributing plants in the marketing area by bulk tank now receive the f.o.b. market price when their milk is diverted to a nonpool plant. Milk normally assembled at a reload point in a zone for which location adjustments apply may be diverted to a nearby plant and the producers receive substantially higher prices than producers delivering to a pool plant in that zone. Definition of a reload point as a pricing point will provide uniformity of treatment to producers. It was proposed that any reload point located at the premises of a pool plant should be considered as part of the operations of such plant, and that any other reload point should qualify for pool participation on the same basis as a supply plant. It was further proposed to limit the defined points to those approved by health authorities and operated by handlers. It is concluded that reload points should be limited to those installations approved by health authorities and, if on the premises of a pool plant, be considered part of such plant's operations. Otherwise the operations of a reload point should be considered for all purposes, except point of pricing, to be a part of the operations of the pool plant to which a major part of the milk passing through it normally moves. This will insure that the handlers now responsible for reports and payments for such milk will continue in that status, and will provide a more satisfactory basis for determination of pool status of the milk assembled at reload points.

Certain exceptions were filed to the effect that producer prices should also be based on the point of receipt when milk normally received in a bulk tank direct from the farm at a distribution plant is diverted to a nonpool plant or another pool plant. Such exceptions point out that the language of the recommended order would have provided

this result with respect to pool plants but not nonpool plants. After careful review of the record it is concluded that the potential dangers pointed out in the exceptions were not sufficiently developed with respect to direct delivered milk to provide a basis at this time for the action requested in such exceptions. Provision is made to continue pricing diversions between pool plants at the plant from which the milk is diverted.

Handlers receive location credit with respect to milk classified as Class I or Class II. Certain changes should be made in the order in which location adjustment credits are assigned with respect to interplant movements of milk. Since movements between plants of different handlers may be classified by agreement of the handlers and there is no provision for assigning classification to the individual plants of a multiple plant operator, assignment provisions must be included so that producers do not pay transportation costs on unnecessary movements of milk. Interplant movements are usually from supply plants to distributing plants. Credit for such movements should be limited to 108 percent of the volume required for Class I or II use at the transferee plant, less direct receipts from producers at such plant. Producers proposed the 8 percent "tolerance" as a reasonable minimum reserve required on an individual plant basis over the month's operations. Provision for a 5 percent "tolerance" is presently included in the Akron-Stark County order. Experience of a representative group of Cleveland dealers shows that receipts exceeded 108 percent of Class I and II utilization in a majority of months during which shipments were received from supply plants. Provisions are also included to define the maximum volume eligible for location adjustment with respect to any movement that might be made to a supply plant.

Where there are movements to a distributing plant from more than one plant, location adjustments should be assigned in the order that will result in the least total adjustment, with the exception that first priority of assignment be given receipts through any reload points considered to be a part of the operations of the transferee plant. This recognizes the association, fixed under other order provisions, between the distributing plant and such reload points.

(e) *Quota plan.* The provisions concerning the quota plan should not be changed except to provide for the computation of quotas for producers serving plants which become pool plants after the beginning of the quota forming months.

Two cooperative associations proposed that the quota plan be deleted from the order. They believed that the quota plan has caused producers to increase their production in the quota forming months to the level of their production in the flush months. Handlers proposed that there should be changes made in the quota forming months, quota operating months and in quota rules with respect to quotas to new producers. Two other cooperative associa-

tions proposed that no change be made to the quota plan at this time. They stated that the quota plan has not been in operation ample time to analyze its effectiveness and any changes should be considered at a future hearing. Moreover, it appears that the seasonality of production improved after the institution of the plan.

In view of this and the fact that the cooperative associations were not in agreement on the operation of the quota plan there should not be any change in the quota plan on the basis of this record. Further consideration of its continuation or changes in its provisions, may be given when further results of the plan may be observed. However, provision should be made for the computation of quotas for producers supplying distributing plants when such plants first achieve pool plants status after the beginning of the quota forming period. Producers supplying such plants in the preceding quota forming months evidently supplied milk for Class I use both before and after the plant achieved pool plant status. If satisfactory evidence of their deliveries during the preceding quota forming period can be furnished, those producers should have quotas computed as if they had been on the market during the entire preceding quota forming months. The present quota provisions appear appropriate for producers delivering to plants which first qualify as supply plants.

(f) *Producer butterfat differential.* No change should be made in the method used in computing the producer butterfat differential. A cooperative association proposed that the producer butterfat differential should be computed by multiplying the price of 92-score butter at Chicago by 115 percent. The basis of their proposal was that producers should be discouraged from producing fat because of the declining market for butterfat. The present producer butterfat differentials in the Cleveland and Akron-Stark County orders are the weighted average of the uses of butterfat in each class.

No change should be made in the present producer butterfat differential because the producer returns will reflect the actual sale value of their butterfat in each class. Thus, any decline in the Class I butterfat market will be reflected in the producer butterfat differential.

(g) *Administrative provisions.* The entire order should be redrafted to incorporate conforming and clarifying changes and to facilitate application of its various provisions.

New or revised language consistent with the order revisions mentioned elsewhere in this decision are provided with respect to a number of definitions.

"Fluid milk product" is defined in the order because frequent references are made to this group of products. The products specified in the fluid milk product definition are milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk not in hermetically sealed cans, cream, and mixtures of cream and milk or skim milk, including reconstituted milk or skim milk but not including frozen or sour

cream, aerated cream products, eggnog or ice cream and frozen dessert mixes.

The dates of the final producer payment should be the 16th to a cooperative association and the 18th to the individual producer. Also, the date at which the market administrator makes payments out of the pool should be advanced from the 18th to the 17th. These changes are required because of the adoption in the combined order of the payment provisions contained in Akron-Stark County order.

The marketing service charge should be five cents per hundredweight. The Akron-Stark County order provides for a five-cent per hundredweight marketing service charge while the Cleveland order provides only four cents. Five cents is a reasonable maximum for the service required to be performed for producers who are not members of a cooperative association. The rate may be reduced by administrative action, but not increased beyond that stated in the order.

An administrative assessment should be made on Class I sales on routes in the marketing area from a nonpool plant from which distribution exceeds the exemption provided. The nonpool handler should pay a share of the cost of administration of the order. Verification of receipts and utilization is required to determine the status of such a nonpool plant.

*Rulings on proposed findings and conclusions.* Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

*General findings.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the afore-

said factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

**Rulings on exceptions.** In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

**Marketing agreement and order.** Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing agreement regulating the handling of milk in the Cleveland, Ohio, and Akron-Stark County, Ohio, marketing area", and "Order amending the order regulating the handling of milk in the Cleveland, Ohio, and Akron-Stark County, Ohio, marketing area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

**It is hereby ordered,** That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

**Referendum order; determination of representative period; and designation of referendum agent.** It is hereby directed that a referendum be conducted to determine whether the issuance of the attached order amending the order regulating the handling of milk in the Cleveland, Ohio, and Akron-Stark County, Ohio, marketing area, is approved or favored by the producers, as defined under the terms of the order, as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of May 1959 is hereby determined to be the representative period for the conduct of such referendum.

W. W. Hurwitz is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (15 F.R. 5177), such referendum to be completed on or before the 30th day from the date this decision is issued.

Issued at Washington, D.C., this 8th day of July 1959.

CLARENCE L. MILLER,  
Assistant Secretary.

**Order<sup>1</sup> Amending the Order Regulating the Handling of Milk in the Cleveland, Ohio, and Akron-Stark County, Ohio, Marketing Area**

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975.102	Continuing obligations
975.103	Liquidation
	MISCELLANEOUS PROVISIONS
975.110	Agents
975.111	Separability of provisions

**AUTHORITY:** §§ 975.0 to 975.111 issued under sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c.

**§ 975.0 Findings and determinations.**

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) **Findings upon the basis of the hearing record.** Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Cleveland, Ohio, and Akron-Stark County, Ohio, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

<sup>1</sup>This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 3 cents per hundredweight or such amount not to exceed 3 cents per hundredweight as the Secretary may prescribe, with respect to (a) all receipts within the month of milk from producers, including such handler's own production; (b) any other source milk allocated to Class I pursuant to § 975.46(b) and the corresponding step of § 975.47; and (c) the amount of milk for which a payment is computed pursuant to § 975.84(b).

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the Akron-Stark County, Ohio, and Cleveland, Ohio, orders (Parts 960 and 975) shall be merged under one order and the handling of milk in the consolidated marketing area, the Northeastern Ohio marketing area, shall be in conformity to and in compliance with the terms and conditions of Order No. 75 as hereby amended, and the aforesaid order is hereby amended to read as follows:

#### DEFINITIONS

##### § 975.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

##### § 975.2 Secretary.

"Secretary" means the Secretary of Agriculture or such other officer or employee of the United States authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

##### § 975.3 Department of Agriculture.

"Department of Agriculture" means the United States Department of Agriculture or such other Federal agency as is authorized to perform the price reporting functions specified in this part.

##### § 975.4 Person.

"Person" means any individual, partnership, corporation, association or any other business unit.

##### § 975.5 Northeastern Ohio marketing area.

"Northeastern Ohio marketing area", hereinafter referred to as the "marketing area", means all territory within the boundaries of Cuyahoga and Summit Counties; Stark County, except Paris and Sugar Creek Townships; the City of Ashtabula in Ashtabula County; Knox Township in Columbiana County; Willoughby, Mentor and Kirtland Townships and the City of Painesville in Lake County; Black River, Sheffield, Avon Lake, Avon, Amherst, Elyria, Ridgeville, Carlisle, Eaton, Columbia and Grafton Townships in Lorain County; Smith

Township in Mahoning County, except Great Lot 35 thereof; Liverpool, Brunswick, Hinckley, York, Granger, Medina, Lafayette, Montville, Sharon and Wadsworth Townships in Medina County; Franklin, Ravenna, Brimfield and Sufield Townships and Lots 5 to 10, 15 to 20, 25 to 30, and 35 to 40, inclusive, of Randolph Township in Portage County; and Sections 1, 2, 3, 10, 11 and 12 of Sugar Creek Township in Wayne County; all in the State of Ohio; together with all piers, docks and wharves connected therewith and including all municipal corporations and all Federal or State installations, institutions or establishments therein.

##### § 975.6 Handler.

"Handler" means (a) any person who operates a pool plant, (b) any person who operates a nonpool plant from which a route is operated in the marketing area, and (c) a cooperative association with respect to the milk of any producer which such cooperative association causes to be diverted for the account of such association from a pool plant to a pool plant or nonpool plant.

##### § 975.7 Producer.

"Producer" means any person other than a producer-handler with respect to milk produced by him having the approval of the appropriate health authority in the marketing area for consumption as fluid milk which is:

(a) Delivered from the farm to a pool plant;

(b) Diverted from the farm directly to a nonpool plant for the account of a cooperative association or of a handler operating a pool plant. Milk so diverted shall be deemed to have been received at the pool plant from which diverted, if for the account of the operator of such plant, or at an identical location if for the account of a cooperative association through diversion from the pool plant of another handler; and

(c) Diverted from the farm directly to another pool plant for the account of a handler operating a pool plant. Milk so diverted shall be deemed to have been received for the account of such handler at the pool plant from which it was diverted.

"Producer" shall not include any such person with respect to milk for which such person retains his status as a producer as defined in another order issued pursuant to the Act and which is classified and priced under such other order.

##### § 975.8 Pool plant.

"Pool plant" means any milk plant specified in paragraph (a), (b), (c) or (d) of this section approved by the appropriate health authority in the marketing area, other than the plant of a producer-handler or a plant for which the handler is exempt pursuant to §§ 975.90 and 975.91.

(a) A plant at which milk is packaged and from which (1) fluid milk products classified as Class I milk are distributed on a route in the marketing area; and (2) total disposition of such fluid milk products on routes is 50 percent or more of total receipts during

the month of milk approved for fluid use by a duly authorized health authority from dairy farmers, through reload points and from other milk plants;

(b) A plant from which there has been delivered to pool plant(s) described in paragraph (a) of this section, either during the current month or during any period of consecutive months ending with the current month, 30 percent or more of its total dairy farm supply of milk;

(c) A plant which was a pool plant during each month of the preceding period of August through January and during that period delivered to pool plant(s) described in paragraph (a) of this section 10 percent or more of its monthly total dairy farm supply of milk during each such month, and 30 percent or more of its total dairy farm supply during the entire August-January period, shall, unless written notice of withdrawal is received by the market administrator before the first day of the month, be a pool plant as follows:

(1) During the months of February through July regardless of shipments; and

(2) During each successive month of August through January in which it delivers 10 percent or more of its total dairy farm supply to pool plant(s) described in paragraph (a) of this section.

(d) A plant located less than 40 miles from the Public Square in Cleveland, Ohio, or less than 27.5 miles from the nearer of the City Hall in Akron, Ohio, or the City Hall in Canton, Ohio, operated by a cooperative association, or associations, if two-thirds or more of the milk (exclusive of that received at pool plants described in paragraphs (b) and (c) of this section) delivered during the immediately preceding six-month period by producers who are members of such association(s) was received at the pool plants of other handlers;

(e) All pool plants described in paragraph (b) or (c) of this section, respectively, operated by a handler may be considered as one plant for the purpose of meeting the percentage requirement of such paragraphs if the handler submits a written request to the market administrator prior to the delivery period for which such consideration is requested; and

(f) A plant which replaces a pool plant shall acquire immediately the pool plant status of the replaced plant if the operator thereof shows to the satisfaction of the market administrator that 50 percent or more of the dairy farmers delivering milk to it previously had been producers at the pool plant so replaced.

##### § 975.9 Nonpool plant.

"Nonpool plant" means any milk plant which is not a pool plant.

##### § 975.10 Producer milk.

"Producer milk" means all the skim milk and butterfat contained in milk received from producers.

##### § 975.11 Other source milk.

"Other source milk" means all skim milk and butterfat contained in (a) receipts during the month of fluid milk products except (1) receipts from other

pool plants and (2) producer milk; and (b) products, other than fluid milk products, from any source (including those produced at the pool plant) which are reprocessed or converted to another product in the pool plant during the month.

#### § 975.12 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk not in hermetically sealed cans, cream, and mixtures of cream and milk or skim milk, including reconstituted milk or skim milk, but not including frozen or sour cream, aerated cream products, eggnog or ice cream and frozen dessert mixes.

#### § 975.13 Producer-handler.

"Producer-handler" means a dairy farmer who operates a milk plant from which Class I products are distributed on route(s) in the marketing area and receives no fluid milk products during the month except milk of his own production or by transfer from pool plants.

#### § 975.14 Route.

"Route" means a delivery (including a delivery by a vendor or sale from a plant or plant store) of any fluid milk product (except bulk cream) classified as Class I milk to a wholesale or retail outlet other than a delivery to any milk plant.

#### § 975.15 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sale or marketing milk or its products for its member; and

(c) To have all of its activities under the control of its members.

#### § 975.16 Eligible milk.

"Eligible milk" means the amount of milk received by a handler from a producer during each of the months specified in § 975.73 which is not in excess of such producer's daily average quota multiplied by the number of days in such month on which such producer delivered milk to such handler. With respect to any producer on "every-other-day" delivery to a pool plant, the days of nondelivery shall be considered as days of delivery for the purpose of this section and § 975.60.

#### § 975.17 Ineligible milk.

"Ineligible milk" means the amount of milk received by a handler from a producer during each of the months specified in § 975.73 which is in excess of eligible milk received from such producer during such month and shall include all milk received from a producer for whom no daily average quota can be computed.

#### § 975.18 Reload point.

"Reload point" means a location, more than 40 miles from the Public Square in Cleveland, Ohio, and more than 27.5 miles from the nearer of the City Hall in Akron or the City Hall in Canton, Ohio, at which facilities approved by the appropriate health authority in the marketing area for transfer of milk from one tank truck to another and for washing of tank trucks are maintained, and at which milk moved from the farm in a tank truck is commingled with other such milk before entering a milk plant. All reloading operations on the premises of a pool plant shall be considered to be a part of such pool plant's operation. Otherwise the operations at a reload point shall be considered to be a part of the operation of the pool plant to which the major portion of the milk moved from farms to the reload point normally moves, except for the application of location adjustments pursuant to §§ 975.55 and 975.81.

#### MARKET ADMINISTRATOR

#### § 975.20 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by and shall be subject to removal at the discretion of, the Secretary.

#### § 975.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations; and

(d) To recommend amendments to the Secretary.

#### § 975.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to, the following:

(a) Within 30 days following the date on which he enters upon his duties or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of funds provided by § 975.86:

(1) The cost of his bond and of the bonds of his employees;

(2) His own compensation; and

(3) All other expenses, except those incurred under § 975.87, necessarily incurred by him in the maintenance and functioning of his office in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who within 10 days after the day upon which he is required to perform such acts, has not made (1) reports pursuant to § 975.30, or (2) payments pursuant to §§ 975.80, 975.84, 975.86, 975.87, or § 975.88;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) On or before the 20th day of each month, report to each cooperative association that so requests the class utilization of milk received during the preceding month by each handler from producers who are members of such association, prorating to such receipts the class utilization of all producer receipts of such handler;

(i) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or nonhandler upon whose utilization the classification of skim milk and butterfat for such handler depends;

(j) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each month as follows:

(1) On or before the 6th day after the end of such month the minimum prices for Class I, Class II, and Class III milk computed pursuant to §§ 975.51, 975.52, and 975.53, respectively, and butterfat differentials computed pursuant to § 975.54;

(2) On or before the 14th day after the end of such month the uniform price computed pursuant to § 975.71, and for April, May and June the price for ineligible milk and the price for eligible milk, computed pursuant to §§ 975.72, and 975.73, respectively, and the butterfat differential computed pursuant to § 975.82;

(k) On or before April 1 of each year provide written notice to: (1) Each producer who made deliveries of milk during the previous October through December as to his daily average quota computed pursuant to § 975.60, (2) each cooperative association as to the daily average quota of each member of such association, and (3) each handler as to the daily average quota of each producer from whom such handler received milk; and

(l) Prepare and disseminate to the public such statistics and information as he deems advisable and as do not reveal confidential information.

## REPORTS, RECORDS, AND FACILITIES

## § 975.30 Reports of receipts and utilization.

On or before the 8th day after the end of the month each handler who operates a pool plant, each handler who operates a nonpool plant, except as he is exempt pursuant to §§ 975.90 and 975.91, and any cooperative association with respect to milk for which it is a handler pursuant to § 975.6(c) shall report for the preceding month to the market administrator in detail and on forms prescribed by the market administrator as follows:

(a) The quantities of skim milk and butterfat contained in or used in the productions of:

(1) Milk received from producers (or qualified dairy farmers, in case of a nonpool plant) and for the months specified in § 975.60 to the aggregate quantities of eligible milk;

(2) Fluid milk products received from other pool plants;

(3) Other source milk; and

(4) Inventories of fluid milk products on hand at the beginning of the month; and

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including a separate statement with respect to:

(1) Disposition of fluid milk products on routes in the marketing area; and

(2) Inventories of fluid milk products on hand at the end of the month; and

(c) Such other information as the market administrator may prescribe.

## § 975.31 Other reports.

Each producer-handler and each handler exempt pursuant to § 975.90 or § 975.91 shall make reports to the market administrator at such time and in such manner as the market administrator may request.

## § 975.32 Payroll reports.

On or before the 25th day after the end of each month, each handler who received milk from producers shall submit to the market administrator his producer payroll for the month, which shall show:

(a) For the months of July through March, the pounds of milk, and the percentage of butterfat contained therein, received from each producer; and for the months of April through June, the pounds of eligible milk and the pounds of ineligible milk, and the percentage of butterfat contained therein, received from each producer;

(b) The amount and date of payment to each producer or cooperative association pursuant to § 975.80; and

(c) The nature and amount of each deduction or charge involved in the payments referred to in paragraph (b) of this paragraph.

## § 975.33 Records and facilities.

Each handler shall maintain, and make available to the market administrator during the usual hours of business, such accounts and records of all of his operations and such facilities as, in the opinion of the market administrator, are necessary to verify reports

or to ascertain the correct information with respect to:

(a) The receipts and utilization of all skim milk and butterfat required to be reported pursuant to § 975.30 or § 975.31;

(b) The pounds of skim milk and butterfat contained in or represented by each fluid milk product on hand at the beginning and at the end of each month;

(c) The weights and tests for butterfat and for other contents of all milk and milk products handled; and

(d) Payments to producers and to cooperative associations.

## § 975.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

## CLASSIFICATION

## § 975.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received at a pool plant which is required to be reported pursuant to § 975.30 shall be classified pursuant to §§ 975.41 through 975.48.

## § 975.41 Classes of utilization.

Subject to the conditions set forth in §§ 975.43 and 975.44, the classes of utilization shall be:

(a) Class I utilization shall be all the skim milk (including the skim milk equivalent of concentrated products) and butterfat (1) disposed of in the form of a fluid milk product, except as provided in subparagraphs (c) (2) and (3) of this section or (2) not accounted for as Class II or Class III utilization;

(b) Class II utilization shall be all skim milk and butterfat (1) used to produce cottage cheese, and (2) disposed of as sour cream for consumption as such;

(c) Class III utilization shall be all skim milk and butterfat (1) used to produce a product other than a fluid milk product or a Class II product, (2) disposed of in fluid milk products in bulk form to any commercial food processing establishment for use in food products prepared for consumption off the premises, (3) disposed of for livestock feed or skim milk dumped subject to prior notification to and inspection (at his discretion) by the market administrator, (4) in cream frozen, (5) in inventory of fluid milk products or sour cream on hand at the end of the month, (6) in shrinkage

allocated to producer milk that is not in excess of 2 percent of the receipts of skim milk and butterfat respectively, in producer milk, plus 1.5 percent of receipts of skim milk and butterfat, respectively, received in bulk tank lots from pool plants, less 1.5 percent of skim milk and butterfat, respectively, disposed of in bulk tank lots to pool plants, and (7) in shrinkage of other source milk.

## § 975.42 Shrinkage.

(a) If a handler has receipts of other source milk, shrinkage shall be prorated between producer milk and other source milk received in the form of fluid milk products in the ratio that 50 times the maximum quantity of skim milk or butterfat, respectively, pursuant to § 975.41(c) (6) bears to that in such other source milk; and

(b) Producer milk diverted by a handler from his pool plant to another plant (pool or nonpool) without first having been received for the purposes of weighing in the diverting handler's pool plant shall be excluded from receipts at the diverting handler's pool plant and shall be included in the receipts of the plant to which such milk was diverted for the purpose of computing shrinkage.

## § 975.43 Transfers.

Skim milk or butterfat disposed of by a handler from a pool plant, including transfers or diversions made by a cooperative association shall be classified:

(a) As Class I milk if transferred or diverted in the form of fluid milk products to the pool plant of another handler except as:

(1) Utilization in another class is claimed by the operators of both plants in their reports submitted pursuant to § 975.30;

(2) The receiving handler has utilization in such class of an equivalent amount of skim milk and butterfat, respectively, after assignment of other source milk and beginning inventory of fluid milk products pursuant to §§ 975.46 and 975.47; and

(3) The classification of the skim milk or butterfat so transferred results in the classification at both plants that returns the highest valued class utilization to milk of producers at both plants.

(b) As Class I milk, if transferred to a producer-handler in the form of a fluid milk product;

(c) As Class I milk if transferred or diverted in the form of milk or skim milk in bulk to a nonpool plant located more than 265 miles from the Public Square in Cleveland, Ohio, by shortest highway distance as determined by the market administrator;

(d) As Class I milk if transferred or diverted to a nonpool plant located less than 265 miles from the Public Square in Cleveland, Ohio, in the form of milk or skim milk in bulk or to any nonpool plant in the form of cream in bulk unless all of the following conditions are met:

(1) The handler claims utilization in another class in his report submitted pursuant to § 975.30;

(2) The operator of the nonpool plant maintains books and records showing the

receipts and utilization of all skim milk and butterfat at such plant which are made available upon request by the market administrator for audit; and

(3) Such receiving plant had actually used in the classification claimed an amount of skim milk or butterfat, respectively, equivalent to the total claimed in such classification by all handlers transferring or diverting milk from pool plants to such nonpool plant, plus that priced in a comparable class under another order on the basis of utilization in such plant. Should the equivalent utilization in the nonpool plant be less than the required total, a pro rata share of the excess shall be classified in the next higher priced available utilization.

**§ 975.44 Responsibility of handlers and reclassification of milk.**

(a) All skim milk and butterfat shall be classified as Class I milk unless the handler who first received such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

**§ 975.45 Computation of the skim milk and butterfat in each class.**

For each month the market administrator shall correct for mathematical and for other obvious errors the monthly report of receipts and utilization submitted by each handler and compute the total pounds of skim milk and butterfat, respectively, in Class I milk, Class II milk, and Class III milk for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water reasonably associated with such solids in the form of whole milk.

**§ 975.46 Allocation of butterfat classified.**

The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to producer milk:

(a) Subtract from the total pounds of butterfat in Class III utilization, the pounds of butterfat shrinkage allowed pursuant to § 975.41(c) (6);

(b) Subtract from the pounds of butterfat remaining in each class, in series beginning with the lowest priced utilization, the pounds of butterfat in other source milk other than that to be subtracted pursuant to paragraph (c) of this section;

(c) Subtract from the pounds of butterfat remaining in each class in series beginning with the lowest priced utilization, the pounds of butterfat contained in other source milk received from a plant at which the handling of milk is fully subject to the classification and pricing provision of another order issued pursuant to the Act;

(d) Subtract from the pounds of butterfat remaining in each class, in series beginning with the lowest priced utilization, the pounds of butterfat contained

in inventory of fluid milk products on hand at the beginning of the month;

(e) Subtract from the butterfat remaining in each class the pounds of butterfat received from other handlers in such classes pursuant to § 975.43(a);

(f) Add to the remaining pounds of butterfat in Class III utilization the pounds of butterfat subtracted pursuant to paragraph (a) of this section; and

(g) If the remaining pounds of butterfat in all classes exceed the pounds of butterfat in milk received from producers, subtract such excess from the remaining pounds of butterfat in each class in series beginning with the lowest priced utilization. Any amount so subtracted shall be known as "overage".

**§ 975.47 Allocation of skim milk.**

Allocate the pounds of skim milk in each class to milk received from producers in a manner similar to that prescribed for butterfat in § 975.46.

**§ 975.48 Computation of total producer milk in each class.**

The amounts computed pursuant to §§ 975.46 and 975.47 shall be combined into one total for each class and the weighted average butterfat content of producer milk in each class determined.

**MINIMUM PRICES**

**§ 975.50 Basic formula price.**

The basic formula price per hundredweight of milk to be used in determining class prices for each month shall be the higher of the prices per hundredweight of milk of 3.5 percent butterfat content computed by the market administrator pursuant to paragraphs (a) and (b) of this section:

(a) The average of the basic (or field) prices ascertained to have been paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator by the Department of Agriculture or by the companies indicated below:

**COMPANY AND LOCATION**

- Borden Co., Mt. Pleasant, Mich.
- Borden Co., New London, Wis.
- Borden Co., Orfordville, Wis.
- Carnation Co., Oconomowoc, Wis.
- Carnation Co., Richland Center, Wis.
- Carnation Co., Sparta, Mich.
- Pet Milk Co., Belleville, Wis.
- Pet Milk Co., Coopersville, Mich.
- Pet Milk Co., New Glarus, Wis.
- Pet Milk Co., Wayland, Mich.
- White House Milk Co., Manitowoc, Wis.
- White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus amounts pursuant to subparagraphs (1) and (2) of this paragraph:

(1) From the average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter for the month as reported by the Department of Agriculture for the Chicago market, subtract 3 cents, add 20 percent of the resulting amount and then multiply by 3.5; and

(2) From the simple average of the weighted averages of the carlot prices per pound of spray and roller process nonfat dry milk solids for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department of Agriculture, deduct 5.5 cents, multiply by 8.5 and then multiply by 0.965.

sumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department of Agriculture, deduct 5.5 cents, multiply by 8.5 and then multiply by 0.965.

**§ 975.51 Class I milk prices.**

The respective minimum prices per hundredweight to be paid by each handler, f.o.b. his plant for milk received from producers or from a cooperative association, during the month which is classified as Class I milk, shall be as follows, as computed by the market administrator:

(a) Add to the basic formula price the following amount for the period indicated:

Delivery period:	<i>Amount</i>
April through July.....	\$1.35
All others.....	1.80

and add or subtract a "supply-demand adjustment" computed as follows:

(1) Divide the total quantity of milk received from producers during the first and second months preceding by the gross quantity of milk utilized as Class I (exclusive of interhandler transfers) at pool plants in the same two months, multiply the result by 100, and round to the nearest whole number. The result shall be known as the "current utilization percentage".

(2) Compute a "deviation percentage" by subtracting from the current utilization percentage as computed in subparagraph (1) of this paragraph, the "standard utilization percentage" shown below:

Month for which the price is being computed:	<i>Standard utilization percentage</i>
January .....	128
February .....	128
March .....	128
April .....	129
May .....	130
June .....	140
July .....	148
August .....	141
September .....	127
October .....	126
November .....	128
December .....	130

(3) Determine the amount of the supply-demand adjustment from the following schedule:

Deviation percentage:	<i>Amount of supply-demand adjustment (cents)</i>
+13 or over.....	-25
+10 or +11.....	-19
+7 or +8.....	-13
+4 or +5.....	-7
+2 to -2.....	0
-4 or -5.....	+7
-7 or -8.....	+13
-10 or -11.....	+19
-13 or below.....	+25

When the deviation percentage does not fall within the tabulated brackets, the adjustment shall be determined by the adjacent bracket which is the same as or nearest to the bracket used in the previous month.

**§ 975.52 Class II milk prices.**

The minimum price per hundredweight to be paid by each handler, f.o.b. his plant, for producer milk of 3.5 per-

cent butterfat content received from producers or from a cooperative association during the month, which is classified as Class II utilization, shall be the basic formula price, as computed pursuant to § 975.50, plus 30 cents.

#### § 975.53 Class III milk prices.

The minimum price per hundredweight to be paid by each handler, f.o.b. his plant, for producer milk of 3.5 percent butterfat content received from producers or from a cooperative association during the month, which is classified as Class III utilization, shall be the basic formula price, as computed pursuant to § 975.50.

#### § 975.54 Butterfat differentials to handlers.

If the average butterfat content of the milk of any handler allocated to any class is more or less than 3.5 percent, there shall be added to the prices of milk for each class as computed pursuant to §§ 975.51, 975.52, and 975.53 for each one-tenth of one percent that the average butterfat content of such milk is above 3.5 percent, or subtracted for each one-tenth of one percent that such average butterfat content is below 3.5 percent, an amount equal to the average daily wholesale price per pound of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the month, multiplied by the following factors:

(a) *Class I milk.* Multiply by 1.3 and divide the result by 10;

(b) *Class II milk.* Multiply by 1.15 and divide the result by 10; and

(c) *Class III milk.* Multiply by 1.15 and divide the result by 10.

#### § 975.55 Handler location adjustment.

For producer milk received at a pool plant or reload point located 40 miles or more from the Public Square in Cleveland, Ohio, and also 27.5 miles or more from the nearer of the City Hall in Akron, Ohio, or the City Hall in Canton, Ohio, the respective class prices for Class I and Class II utilization pursuant to §§ 975.51 and 975.52 shall be reduced at the rate specified below for the location of such plant or reload point:

(a) With respect to milk classified as Class I or Class II utilization without movement as a fluid milk product in bulk form to another pool plant;

(b) With respect to fluid milk products moved in bulk form to a pool plant described in § 975.8(a) in a volume not in excess of that computed in accordance with the following assignment:

(1) The volume by which an amount equal to 108 percent of Class I and Class II utilization at such transferee plant (including the volume assignable under the provisions of this subparagraph with respect to any transfers to a second such plant described in § 975.8(a)), exceeds receipts of producer milk at such plant will be assigned in sequence to (i) receipts in the form of fluid milk from reload points considered to be a part of such plant's operations, and (ii) to other receipts of fluid milk products from pool plants or reload points in the sequence at which the least total adjustment would apply.

(c) With respect to fluid milk products moved in bulk to pool plants described in § 975.8 (b), (c), or (d), in a volume not in excess of that by which (1) 108 percent of the Class I and Class II utilization specified in paragraph (a) of this section, plus (2) that assignable to such plant pursuant to paragraph (b) of this section exceeds receipts of producer milk at such plant, such volume to be assignable to transferor plants in the sequence provided in paragraph (b) of this section; and

(d) The rates of location adjustment credit shall be as follows, based on shortest highway distance from the Public Square in Cleveland, Ohio, as determined by the market administrator:

Distance:	Cents per hundredweight
40.1-60 miles.....	13
60.1-74 miles.....	20

plus 2 cents per hundredweight for each 14 miles or major fraction thereof in excess of 74 miles.

#### § 975.56 Equivalent price provision.

Whenever the provisions of this part require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining minimum class prices or for any other purpose and the specified price is not reported or published, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with the price specified:

#### DETERMINATION OF ELIGIBLE MILK QUOTA

#### § 975.60 Determination of eligible milk quota for each producer.

Subject to the rules set forth in § 975.61, the market administrator shall determine quotas for producers as follows: During each of the months of April through June, inclusive, the daily quota of each producer whose milk was received by a handler(s) on not less than thirty (30) days during the immediately preceding months of October through December, inclusive, shall be a quantity computed by dividing such producer's total pounds of milk delivered in the 3-month period by the number of days from the date of first delivery to the end of such 3-month period.

#### § 975.61 Quota rules.

(a) Except as provided in paragraph (b) of this section, an eligible milk quota shall apply to deliveries of milk by the producer for whose account that milk was delivered to a handler(s) during the quota forming period;

(b) A daily quota may be transferred during the period of April through June by notifying the market administrator in writing before the first day of any month that such quota is to be transferred to the person named in such notice, but under the following conditions only:

(1) In the event of the death of a producer, the entire daily quota may be transferred to a member of such producer's immediate family who carries on the dairy operation on the same farm;

(2) If a quota is held jointly and such joint holding is terminated on the basis of written notice to the market administrator from the joint holders, the entire

daily quota may be transferred to one of the joint holders, or divided in accordance with such notice between the former joint holders if they continue dairy farm operations; and

(c) In the case of producers delivering milk to a pool plant described in § 975.8(a) which first qualifies as such during any month from November through June, a daily average quota for each such producer shall be calculated pursuant to § 975.60 on the basis of his verifiable deliveries of milk to such plant during the period of October through December immediately preceding.

#### DETERMINATION OF UNIFORM PRICE

#### § 975.70 Net obligation of handlers operating pool plants.

The net obligation for milk received by each handler shall be computed as follows:

(a) Multiply the pounds of milk in each class computed pursuant to § 975.48 by the applicable class prices;

(b) Add an amount computed by multiplying the pounds of overage computed pursuant to § 975.46(g) and the corresponding step of § 975.47 by the applicable class prices;

(c) Add any amount obtained through multiplying by the difference between the Class III price for the preceding month and the Class I price for the current month the lesser of:

(1) The hundredweight of milk subtracted from Class I pursuant to § 975.46(d) and the corresponding step of § 975.47; or

(2) The hundredweight of producer milk classified as Class III utilization (except as shrinkage) for the preceding month;

(d) Add an amount obtained through multiplying by the difference between the Class III price for the preceding month and the Class II price for the current month the lesser of:

(1) The hundredweight of milk subtracted from Class II pursuant to § 975.46(d) and the corresponding step of § 975.47; or

(2) The hundredweight of producer milk classified as Class III utilization (except as shrinkage) for the preceding month less that subtracted from Class I pursuant to § 975.46(d) and the corresponding step of § 975.47.

(e) During any month in which the total receipts of producer milk (exclusive of milk diverted from the pool plant for another handler to a nonpool plant for the account of a cooperative association unless written evidence is furnished the market administrator that such milk was offered for delivery to a pool plant at class prices of the order) are more than 110 percent of the total Class I utilization at all pool plants add an amount equal to the difference between the values (subject to butterfat and location differentials) at the Class I price and the Class III price with respect to:

(1) Other source milk subtracted from Class I pursuant to § 975.46(b) and the corresponding step of § 975.47; and

(2) Milk in inventory subtracted from Class I pursuant to § 975.46(d) and the corresponding step of § 975.47 which is in excess of the sum of:

(i) The quantity of milk for which a payment is computed pursuant to paragraph (c) of this section; and

(ii) The quantity of milk subtracted from Class III pursuant to § 975.46(c) and the corresponding step of § 975.47 for the month preceding.

#### § 975.71 Computation of uniform price.

For each month, the market administrator shall compute the "uniform price" per hundredweight for milk of 3.5 percent butterfat content for milk delivered to pool plants at which no location adjustments are applicable as follows:

(a) Combining into one total the values computed under § 975.70 for all handlers who reported pursuant to § 975.30 for such month, except those in default in payments required pursuant to § 975.84 for the preceding month;

(b) Adding the aggregate of the values of all allowable location adjustments computed at the maximum rates for the appropriate zones set forth in § 975.81;

(c) Add any amount paid into the producer-settlement fund and subtract any amount paid out of the producer-settlement fund pursuant to § 975.88(a);

(d) Adding an amount representing not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Subtracting, if the weighted average butterfat test of all milk received from producers represented by the values included in paragraph (a) of this section is greater than 3.5 percent or adding, if the weighted average butterfat test of such milk is less than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the variance of such weighted average butterfat test from 3.5 percent, by the butterfat differential computed pursuant to § 975.82 multiplied by 10;

(f) Dividing by the hundredweight of milk received from producers represented by the values included in paragraph (a) of this section; and

(g) Subtracting not less than 4 cents nor more than 5 cents.

#### § 975.72 Computation of ineligible milk price.

For each of the months of April through June the market administrator shall compute the uniform price per hundredweight for ineligible milk of 3.5 percent butterfat content by:

(a) Computing the total value on a 3.5 percent butterfat basis of ineligible milk included in these computations by multiplying the hundredweight of such milk not in excess of the total quantity of Class II and Class III milk included in these computations by the price for Class III milk of 3.5 percent butterfat content, multiplying the hundredweight of such milk in excess of the total hundredweight of such Class II and Class III milk by the price for Class I milk of 3.5 percent butterfat content, and adding together the resulting amounts; and

(b) Dividing the total value of ineligible milk obtained in paragraph (a) of this section by the total hundredweight of such milk, and adjusting to the nearest cent.

#### § 975.73 Computation of eligible milk price.

For each of the months of April through June the market administrator shall compute the uniform price per hundredweight for eligible milk of 3.5 percent butterfat content f.o.b. the marketing area, received from producers by:

(a) Subtracting the value of ineligible milk obtained in § 975.72(a) from the aggregate value of milk computed pursuant to § 975.70 (a) through (e) and adjusting by any amount involved in adjusting the uniform price of ineligible milk to the nearest cent;

(b) Dividing the amount obtained in paragraph (a) of this section by the total hundredweight of eligible milk included in these computations; and

(c) Subtracting not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (b) of this section.

#### § 975.74 Notification.

On or before the 14th day after each month the market administrator shall notify each handler who submitted a report for the preceding month pursuant to § 975.30 of:

(a) The classification pursuant to §§ 975.46 and 975.47 of skim milk and butterfat contained in producer milk received by such handler during the month and the value of such milk computed pursuant to § 975.70;

(b) The uniform prices for the month computed pursuant to §§ 975.71, 975.72, and 975.73; and

(c) The amount due such handler pursuant to § 975.85 and the amount to be paid by such handler pursuant to §§ 975.84, 975.86, and 975.87.

#### PAYMENTS

##### § 975.80 Time and method of payment.

(a) Except as provided by paragraph (b) of this section, on or before the 18th day of each month, each handler (except a cooperative association) shall pay each producer for milk received from him during the preceding month, not less than an amount of money computed by multiplying the total pounds of such milk by the applicable uniform price(s) pursuant to § 975.71 or §§ 975.72 and 975.73 adjusted by the butterfat and location differentials pursuant to §§ 975.81 and 975.82, and less any proper deductions authorized by the producer, including advance payments made pursuant to paragraph (c) of this section: *Provided*, That if by such date such handler has not received full payment for such month pursuant to § 975.85 he may reduce such payments uniformly per hundredweight for all producers, by an amount not in excess of the per hundredweight reduction in payment from the market administrator; however, the handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

(b) (1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect pay-

ment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall pay to the cooperative association on or before the 16th day of each month, in lieu of payments pursuant to paragraph (a) of this section an amount equal to the gross sum due for all milk received from certified members, less amounts owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer and submit to the cooperative association written information which shows for each such member-producer (i) the total pounds of milk received from him during the preceding month, (ii) the total pounds of butterfat contained in such milk, (iii) the number of days on which milk was received, and (iv) the amounts withheld by the handler in payment for supplies sold. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association;

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler shall be made by written notice to the market administrator, and shall be subject to his determination;

(c) Upon written request filed with him on or before the 15th day of the month by a producer, or by a cooperative association which collects payments pursuant to paragraph (b) of this section, each handler shall make advance payment as follows:

(1) On or before the last day of the month, to each such producer who has not discontinued delivery of milk to such handler, an amount not less than the value of milk received from such producer during the first 15 days of such month computed at the Class III price for 3.5 percent milk for the preceding month, without deduction for hauling;

(2) On or before the 27th day of the month, to the cooperative association, with respect to milk received during the first 15 days of the month from certified members specified in the request for advance payment, an amount not less than the aggregate value of such milk at the Class III price for 3.5 percent milk for the preceding month, without deduction for hauling; and

(d) On or before the 15th day after the end of each month, each handler shall pay a cooperative association which is a handler, with respect to milk

received by him from a pool plant operated by such cooperative association, not less than an amount computed by multiplying the minimum prices for milk in each class, subject to the applicable location adjustment provided by § 975.55 and the butterfat differential provided by § 975.54, by the hundredweight of milk in each class pursuant to §§ 975.46 and 975.47.

**§ 975.81 Location adjustments to producers.**

In making payments pursuant to paragraphs (a) and (b) of § 975.80, a handler may deduct with respect to eligible milk received from producers during the months specified in § 975.60 and with respect to all milk received from producers at a pool plant or reload point located 40 miles or more from the Public Square in Cleveland, Ohio, and also 27.5 miles or more from the nearer of the City Hall in Akron, Ohio, or the City Hall in Canton, Ohio, by the shortest highway distance as determined by the market administrator, at the rates specified in § 975.55 based on mileage measured from Public Square in Cleveland, Ohio.

**§ 975.82 Butterfat differential.**

In making payments pursuant to paragraphs (a) and (b) of § 975.80 there shall be added to or subtracted from the uniform price per hundredweight, for each one-tenth of 1 percent of such butterfat content in milk above or below 3.5 percent, as the case may be, a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a), (b), and (c) of § 975.54 weighted by the pounds of butterfat in producer milk in Classes I, II, and III, respectively, with the result rounded to the nearest tenth of a cent.

**§ 975.83 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", into which he shall deposit all payments made pursuant to § 975.84 and out of which he shall make all payments pursuant to § 975.85.

**§ 975.84 Payments to the producer-settlement fund.**

On or before the 16th day after the end of the month each handler shall make payments to the market administrator as follows:

(a) If the value of milk received by a handler in the month as computed pursuant to § 975.70 exceeds the amount which such handler is required to pay all producers pursuant to § 975.80 such handler shall pay the difference between the two amounts; and

(b) Except as exempted pursuant to §§ 975.90, 975.91 and 975.92 each handler who operates during the month a non-pool plant out of which a route(s) was operated which extended into the marketing area an amount equal to the total hundredweight of fluid milk products so disposed of multiplied by the difference between the Class I price adjusted for location and butterfat and the Class III price.

**§ 975.85 Payments out of the producer-settlement fund.**

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount by which such handler's value pursuant to § 975.70 is less than the total minimum amount required to be paid by him pursuant to paragraphs (a) and (b) of § 975.80 less any unpaid obligations of such handler to the market administrator pursuant to §§ 975.84, 975.86, 975.87, or § 975.88: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments to all such handlers pursuant to this paragraph the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

**§ 975.86 Expense of administration.**

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 16th day after the end of each month three cents per hundredweight, or such amount not exceeding three cents per hundredweight as the Secretary may prescribe with respect to:

(a) All receipts within the month of milk from producers, including milk of such handler's own production;

(b) Any other source milk allocated to Class I pursuant to § 975.46(b) and the corresponding step of § 975.47; and

(c) The amount of milk for which a payment is computed pursuant to § 975.84(b).

**§ 975.87 Marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers pursuant to paragraphs (a) and (b) of § 975.80, with respect to all milk received from each producer (except milk of such handler's own production) at a plant, not operated by a cooperative association of which such producer is a member, shall deduct five cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, to be announced by the market administrator on or before the 14th day after the end of each month; and, on or before the 16th day after the end of such month, shall pay such deductions to the market administrator. Such monies shall be expended by the market administrator to verify weights, samples, and tests of the milk of such producers and to provide such producers with market information; such services to be performed in whole or in part by the market administrator, or by an agent engaged by and responsible to him;

(b) In the case of producers whose milk is received at a plant, not operated by a cooperative association of which such producers are members, and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the market administrator, each handler shall make, in lieu of the deductions specified in paragraph (a) of

this section such deductions from payments required pursuant to paragraphs (a) and (b) of § 975.80 as may be authorized by such producers, and pay such deductions on or before the 16th day after the end of each month to the cooperative association rendering such services and of which such producers are members.

**§ 975.88 Adjustment of accounts.**

(a) *Payments.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due (1) the market administrator from such handler, (2) such handler from the market administrator, or (3) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

(b) *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to §§ 975.84, 975.85, 975.86, 975.87 or paragraph (a) of this section shall be increased one-half of one percent on the first day of the calendar month next following the due date of such obligation and, on the first day of each calendar month thereafter until such obligation is paid.

**§ 975.89 Termination of obligations.**

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers; the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of

such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the months during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

#### APPLICATION OF PROVISIONS

##### § 975.90 Milk subject to other Federal orders.

Milk received at the plant of a handler at which the handling of milk is fully subject during the month to the pricing and payment provisions of another marketing agreement or order issued pursuant to the Act and from which the disposition of Class I milk in the other Federal marketing area exceeds that in the Northeastern Ohio marketing area shall be exempted for such month from all provisions of this part except §§ 975.31, 975.32, 975.33 and 975.34 unless the Secretary determines that the applicable order should more appropriately be determined on some other basis.

##### § 975.91 Handler exemption.

A handler who operates a plant located outside the marketing area from which an average of less than 300 points (one point being defined as one-half pint of cream or one quart of any other fluid milk product) of Class I milk per day is disposed of during the month on a route(s) operated wholly or partly within the marketing area shall be exempted for such month from all provisions of this part except §§ 975.31, 975.32, 975.33 and 975.34.

##### § 975.92 Producer-handler.

A producer-handler shall be exempt from all provisions of this subpart except §§ 975.31, 975.33 and 975.34.

#### EFFECTIVE TIME, SUSPENSION OR TERMINATION

##### § 975.100 Effective time.

The provisions of this part or of any amendment to this part, shall become effective at such time as the Secretary may

declare and shall continue in force until suspended or terminated.

##### § 975.101 Suspension or termination.

The Secretary shall, whenever he finds that this part, or any provisions of this part, obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this part or any such provision of this part.

##### § 975.102 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations under this part the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

##### § 975.103 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

#### MISCELLANEOUS PROVISIONS

##### § 975.110 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

##### § 975.111 Separability of provisions.

If any provision of this part or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

[F.R. Doc. 59-5788; Filed, July 13, 1959; 8:48 a.m.]

## FEDERAL AVIATION AGENCY

[14 CFR Part 507 I

[Regulatory Docket No. 57]

### AIRWORTHINESS DIRECTIVES

#### Notice of Proposed Rule Making

Pursuant to the authority delegated to me by the Administrator (§ 405.27, 24 F.R. 2196), notice is hereby given that the Federal Aviation Agency has under

consideration a proposal to amend Part 507 of the regulations of the Administrator to include airworthiness directives requiring inspection, replacement or modification of Beech and Lockheed aircraft, and Curtiss propellers.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section, Federal Aviation Agency, Room E-316, 1711 New York Avenue NW., Washington 25, D.C. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination by interested persons in the Docket Section when the prescribed time for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) by adding the following airworthiness directives:

**BEECH.** Applies to all Beech Model C-45G, TC-45G, C-45H, TC-45H and D18S airplanes.

Compliance required as indicated.

Corrosion of fuel supply lines in the wing root area can result from the flexible cockpit hot air duct touching the aluminum fuel line. Fuel line leaks due to this corrosion may cause fuel system malfunctioning or hazardous accumulations of fuel and fumes in the wings or cabin. To prevent these conditions, accomplish the following:

(a) Compliance required not later than September 15, 1959.

(1) Inspect the  $\frac{5}{8}$  inch O.D. fuel line (Beech P/N's 407-189686 LH and 407-189731 RH) beneath each battery installation on both sides of the airplane for indications of corrosion. Replace the lines if damaged.

(2) Install  $\frac{5}{8}$  inch I.D. x  $\frac{1}{2}$  inch tubing (Tygon tubing manufactured by U.S. Stone-ware, Akron 9, Ohio) split lengthwise over the fuel lines (407-189686 LH and 407-189731 RH) in the area of the cockpit hot air duct. Secure the split tubing by taping.

(3) Obtain adequate clearance between the fuel line and the cabin hot air duct by installing a suitable double clamp on the line and duct.

(b) Compliance required at each periodic airplane inspection after accomplishment of (a).

(1) Remove split Tygon tubing from fuel supply lines (407-189686 LH and 407-189731 RH) and inspect lines for corrosion. Replace fuel lines if necessary.

(2) Reinstall split Tygon tubing and double clamp between cabin hot air duct and fuel line as outlined in (a) (2) and (a) (3).

(Beech Service Bulletin No. 68, Model D18S issued February 1959, covers this same subject.)

**CURTISS PROPELLER.** Applies to all Curtiss Model C634S-C422, C634S-C514, and C634S-C516 propellers.

Compliance requires at first propeller overhaul after January 1, 1960, but not later than May 1, 1960.

Excessive wear of power unit motor and mating speed reducer splines in Curtiss C634S-C400 and C634S-C500 series propellers

has been observed at a time short of a full overhaul period. In order to minimize the possibility of such occurrences, provide a new motor rotor assembly which incorporates a longer shaft with splines of a larger pitch diameter and a new mating splined cleave and high speed drive gear. Modification of Curtiss Propeller Assemblies C634S-C422, C634S-C514, and C634S-C516 to Propeller Assemblies C634S-C466, C634S-C522, and C634S-C524, respectively, is considered an acceptable means to accomplish the desired objective.

(Curtiss Service Bulletin No. C-24 covers this same subject.)

Compliance with AD 59-7-1 will no longer be required when this AD is compiled with.

LOCKHEED. Applies to all Model 1049C, 1049D, 1049E, 1049G, and 1049H aircraft. Compliance required as indicated.

The following inspections have been established as a result of recently found cracking in the inner wing rear spar web at Wing Station 458.

At the next block overhaul or 4,000 flight-hours, whichever occurs first, on all aircraft (regardless of accumulated flight time) inspect the inner wing rear spar web at Station 458 for cracks in the upper and lower notched web area shown in Lockheed Drawing 555353. Inspection is applicable to both left and right wings. The use of X-ray is recommended since the area under surveillance is difficult to inspect visually.

If cracks are discovered incorporate the reinforcements shown in Lockheed Drawing 555353, or equivalent.

If no cracks are discovered, the reinforcements shown in Lockheed Drawing 555353 may be incorporated. Otherwise, reinspection at 4,000 flight-hour periods or block overhaul, whichever is less, is required to insure detection of cracks. The use of X-ray is also recommended for reinspection.

(Lockheed Service Letter FS/231094 covers this same subject.)

Issued in Washington, D.C., on July 7, 1959.

WILLIAM B. DAVIS,  
Director,  
Bureau of Flight Standards.

JULY 7, 1959.

[F.R. Doc. 59-5793; Filed, July 13, 1959; 8:48 a.m.]

## FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 10, 11, 16]

[Docket No. 12295; FCC 59-689]

### PUBLIC SAFETY, INDUSTRIAL AND LAND TRANSPORTATION RADIO SERVICES

#### Further Notice of Proposed Rule Making

In the matter of amendment of Parts 10, 11 and 16 of the Commission's rules to change the effective date of narrow-band technical standards in the 25-50 and 152-162 Mc bands; Docket No. 12295.

1. Notice is hereby given of further proposed rule making in the above entitled matter.

2. The (First) Report and Order in this proceeding, released June 30, 1958 (FCC 58-620) specifies, among other things, that in all cases where the Commission's rules governing a particular

service require frequency coordination, the assignment of any frequency in the 25-50 or 152-162 Mc bands, including "split channels", may be made only when coordination of the frequency selection has been effected with respect to all stations in the same or other services located in the same area and authorized to operate within 30 kc of the requested frequency or frequencies. That Report and Order further specifies that, subsequent to the date when the deviation of "wide-band" equipment is required to be reduced so as not to exceed that specified in the "narrow-band" standards, the Commission will not consider that interference caused to "wide-band" receivers constitutes "harmful interference".

3. Since it has been determined, that interference to "wide-band receivers" will not be considered to constitute "harmful interference" subsequent to the date when the deviation of "wide-band" equipment in a particular service is required to be reduced so as not to exceed that specified in the "narrow-band" standards, it appears that the criteria by which coordination of frequencies 30 kc or less removed, in the 25-50 Mc or 152-162 Mc bands, should be accomplished in that service need include only the problem of interference to "narrow-band" receivers; i.e., to receivers which are designed to be used in conjunction with transmitters meeting the narrow band standards. Accordingly, it appears that the areas in which coordination need be accomplished with respect to frequencies separated as indicated above in those services where the deviation of "wide-band" equipment has been required to be reduced to  $\pm 5$  kc (the Industrial and Land Transportation Radio Services) will be the same area in which such "adjacent channel" operation might reasonably be expected to cause mutual interference between equipments all complying with the more stringent narrow-band standards.

4. In response to the original Notice of Proposed Rule Making in this matter (FCC 58-78) released January 23, 1958, the Electronic Industries Association (EIA) submitted excerpts from the Joint Technical Advisory Committee (JTAC) Subcommittee 51.3 "Report on Land Mobile Channeling Arrangements", dated May 28, 1953. This report appears to show that, when using transmitters having 50 watts power output into antennas 100 feet above ground level, a separation of only 7 miles is required to avoid mutual interference of a grade which might be classed as excessive between stations using "narrow-band" equipment and operating on frequencies 20 kc apart (as in the 25-50 Mc band), and that similarly a separation of less than one mile (actually only 0.7 mile) is sufficient when operating on frequencies separated by 30 kc, as in the 152-162 Mc band. Extrapolating this data to include the maximum transmitter input power authorized on a regular basis in the Public Safety, Industrial or Land Transportation Radio Services on the frequencies here involved (600 watts), it appears that less than eleven miles separation is necessary when operating on frequencies 20 kc apart, and that less than one

and one-half mile geographical separation is needed when the stations operate on frequencies 30 kc apart, to avoid any expected "adjacent-channel" interference between stations using "narrow-band" equipment and normal antenna heights, with non-directional patterns. These separation figures are nominal when compared to the average range of systems operating in these bands, and even if strictly applied, indicate that there would be cases of overlapping service areas. Since this situation will continue to require that the applicant or his engineering advisor exercise discretion in frequency selection it is thought that the reduction in frequency coordination requirements being proposed herein will not materially increase the interference potential.

5. In view of the foregoing, the Commission now proposes to change the requirements previously established in this proceeding regarding frequency coordination, with respect to the Industrial and Land Transportation Radio Services only, so as to specify that, in those services, in all cases where the Commission's rules governing the particular service involved require frequency coordination, the assignment of any frequency in the 25-50 or 150-162 Mc bands, including "split channels", may be made only when coordination of the frequency selection has been effected with respect to all stations in the same or other services located in the same area and authorized to operate within 15 kc (rather than 30 kc) of the requested frequency or frequencies. Specifically, the Commission proposes to amend § 11.8(a)(2) of the rules governing the Industrial Radio Services and §§ 16.8(f)(1) and 16.9(a)(1) of the rules governing the Land Transportation Radio Services by substituting the figure 15 kilocycles (or kc) for the figure 30 kilocycles (or kc) where it appears in those sections, and to amend such language in these parts as may be necessary to provide consistency with this change.

6. Authority for the rule amendments proposed herein is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

7. Any interested person who is of the opinion that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, and any person desiring to support this proposal, may file with the Commission on or before August 28, 1959, a written statement or brief setting forth his comments. Comments in reply to the original comments may be filed within 10 days from the last day for filing said original data, views, or arguments. No additional comments may be filed unless (1) specifically requested by the Commission, or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments prior to taking final action in this matter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

8. In accordance with the provisions of § 1.54 of the Commission's rules and regulations, an original and 14 copies of all

statements, briefs, or comments filed shall be furnished the Commission.

Adopted: July 8, 1959.

Released: July 9, 1959.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] MARY JANE MORRIS,  
Secretary.

[F.R. Doc. 59-5799; Filed, July 13, 1959;  
8:49 a.m.]

## NOTICES

### DEPARTMENT OF JUSTICE

#### Office of Alien Property

[Bar Order SA-7]

#### CERTAIN BULGARIAN, HUNGARIAN, AND RUMANIAN DEBTORS

#### Order Fixing Bar Date for Filing Debt Claims

In accordance with section 208(b) of the International Claims Settlement Act of 1949, as amended, and by virtue of the authority vested in the Attorney General by said Act and Executive Order No. 10644, January 4, 1960 is hereby fixed as the date after which the filing of debt claims shall be barred in respect of Bulgarian, Hungarian and Rumanian debtors, any of whose property was first vested in or transferred to the Attorney General between January 1, 1959 and June 30, 1959, inclusive.

(Pub. Law 285, 84th Cong., 69 Stat. 252; E.O. 10644, Nov. 7, 1955, 20 F.R. 8363)

Executed at Washington, D.C., this 7th day of July 1959.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,  
Assistant Attorney General,  
Director, Office of Alien Property.

[F.R. Doc. 59-5786; Filed, July 13, 1959;  
8:47 a.m.]

### DEPARTMENT OF THE INTERIOR

#### Office of the Secretary

J. F. EMERY

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

- (1) None.
- (2) None.
- (3) None.
- (4) None.

This statement is made as of June 26, 1959.

Dated: June 26, 1959.

J. F. EMERY.

[F.R. Doc. 59-5775; Filed, July 13, 1959;  
8:46 a.m.]

#### RIGGS SHEPPERD

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

- (1) None.
- (2) None.
- (3) None.
- (4) None.

This statement is made as of June 15, 1959.

Dated: June 15, 1959.

RIGGS SHEPPERD.

[F.R. Doc. 59-5776; Filed, July 13, 1959;  
8:46 a.m.]

#### ALEXANDER H. WADE, JR.

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

- (1) None.
- (2) None.
- (3) None.
- (4) None.

This statement is made as of June 16, 1959.

Dated: June 16, 1959.

A. H. WADE, JR.

[F.R. Doc. 59-5777; Filed, July 13, 1959;  
8:46 a.m.]

#### FRED H. WILEY

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

- (1) None.
- (2) None.
- (3) None.
- (4) None.

This statement is made as of June 19, 1959.

Dated: June 19, 1959.

FRED H. WILEY.

[F.R. Doc. 59-5778; Filed, July 13, 1959;  
8:46 a.m.]

#### W. W. WILLIAMS

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

- (1) None.
- (2) None.
- (3) None.
- (4) None.

Dated: June 12, 1959.

W. W. WILLIAMS.

[F.R. Doc. 59-5779; Filed, July 13, 1959;  
8:46 a.m.]

#### L. A. MOLLMAN

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

- (1) None.
- (2) None.
- (3) None.
- (4) None.

This statement is made as of June 24, 1959.

Dated: June 24, 1959.

L. A. MOLLMAN.

[F.R. Doc. 59-5780; Filed, July 13, 1959;  
8:46 a.m.]

#### CLARENCE W. MAYOTT

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

- (1) None.
- (2) None.
- (3) None.
- (4) None.

This statement is made as of June 22, 1959.

Dated: June 22, 1959.

CLARENCE W. MAYOTT.

[F.R. Doc. 59-5781; Filed, July 13, 1959; 8:46 a.m.]

H. O. SPRINKLE

### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 23, 1955, the following changes have taken place in my financial interests during the past six months:

- (1) None.
- (2) None.
- (3) None.
- (4) None.

This statement is made as of June-30, 1959.

Dated: July 1, 1959.

HUBERT O. SPRINKLE.

[F.R. Doc. 59-5782; Filed, July 13, 1959; 8:46 a.m.]

## DEPARTMENT OF COMMERCE

Federal Maritime Board

### CALIFORNIA ASSOCIATION OF PORT AUTHORITIES

#### Notice of Agreement Filed for Approval

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 7345-7, between the members of the California Association of Port Authorities modifies the basic agreement of that conference (No. 7345, as amended) by deleting Articles 27 and 28. Article 27 provides that the president, upon retiring, shall become an honorary member of the Association. Article 28 provides for a Program and Policy Committee for the purpose of reviewing the Association's activities and policies and to make such recommendations in regard thereto as it deems necessary for the welfare of the Association.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: July 9, 1959.

By order of the Federal Maritime Board.

[SEAL]

GEO. A. VIEHMANN,  
Assistant Secretary.

[F.R. Doc. 59-5791; Filed, July 13, 1959; 8:48 a.m.]

## FEDERAL AVIATION AGENCY

[Agency Bulletin 59-34]

### DIRECTOR, BUREAU OF FLIGHT STANDARDS

#### Delegation of Final Authority

1. *Purpose.* The purpose of this Notice is to delegate certain authority of the Administrator under Title III and Title VI of the Federal Aviation Act of 1958 relating to the making of rules and regulations prescribing Technical Standard Orders for Aircraft Materials, Parts, Processes and Appliances; Standard Instrument Approach Procedures; and Minimum En Route IFR Altitudes to the Director, Bureau of Flight Standards.

2. *Delegation.* Section 303(d) of the Federal Aviation Act of 1958 authorizes the Administrator to delegate the performance of any function under the Act to any officer, employee, or administrative unit under his jurisdiction.

Final authority to make, issue, amend and terminate rules and regulations promulgated under Title III and Title VI of the Act relating to the subject matters listed below is hereby delegated to the Director, Bureau of Flight Standards:

Technical Standard Orders for Aircraft Materials, parts, Processes and Appliances  
Standard Instrument Approach Procedures  
Minimum En Route IFR Altitudes

The Director is directed to exercise this authority in accordance with any applicable plans and policies established or approved by the Administrator.

3. *Effective date.* This Notice is effective July 1, 1959.

(Sec. 313(a), 303(d), 72 Stat. 752, 747; 49 U.S.C. 1354, 1344)

Issued in Washington, D.C., on July 1, 1959.

JAMES T. PYLE,  
Acting Administrator.

[F.R. Doc. 59-5770; Filed, July 13, 1959; 8:45 a.m.]

## FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 12729; FCC 59-681]

### DAYTIME BROADCAST STATIONS

#### Report on Inquiry Into Hours of Operation

In the matter of inquiry into the advisability of authorizing standard broadcast stations to operate with facilities licensed for daytime operation from 6:00 a.m. or local sunrise (whichever is earlier) to 6:00 p.m. or local sunset (whichever is later); Docket No. 12729.

1. On January 12, 1959, the Commission instituted an inquiry pursuant to section 403 of the Communications Act of 1934, as amended, in the above-entitled matter (FCC 59-11; 24 F.R. 375) with reference to the hours of operation of broadcasting stations licensed to broadcast during the daytime hours, i.e., between local sunrise and sunset. The Notice of Inquiry invited the filing of comments by interested parties concerning the service gains and losses which would result from permitting daytime stations to operate from 6:00 a.m. to 6:00 p.m. regardless of any nighttime skywave interference occurring during this time segment. The sixteen issues set forth in the Notice are attached as Appendix III.<sup>1</sup> The time for filing comments was set for April 8, 1959, and was, upon petition, extended to May 8, 1959. Comments were filed by the later date.

2. Earlier the Commission had given consideration in a rule making proceeding (Docket No. 12274) to a petition of the Daytime Broadcasters Association<sup>2a</sup> requesting that the rules be amended to license daytime stations to extend their broadcasting during such nighttime hours as may occur between 5:00 a.m. and 7:00 p.m. Denying the petition, the Commission decision (FCC 58-891; 23 F.R. 7488, September 19, 1958) held the record conclusively demonstrated, in view of the tremendous losses which would result to the existing radio service throughout the United States from the operation contemplated by the petition as compared with the much smaller amount of new services which would be provided in some locations,<sup>2b</sup> that the

<sup>1</sup> Appendix III filed with the original document.

<sup>2a</sup> The Daytime Broadcasters Association represents some 150 daytime radio stations throughout the United States.

<sup>2b</sup> The Commission Report and Order announcing the decision found that: "The population which would gain service during these hours is vastly exceeded by the population which would lose the service of existing stations because of the additional interference which would result on all but a few of the 107 standard broadcast frequencies from the operation of daytime stations during the non-daytime hours (before sunrise and after sunset) contemplated by the proposal. The daytime stations so operating during non-daytime hours would generally serve only a very small fraction of the areas and populations which they serve during daytime hours, a fact which would sharply limit the gains in service which would result. As a result of the additional interference so created, clear channel, unlimited time Class II and Class III stations would be limited in service so that in many instances they could not serve even all of the communities to which they are assigned. While a first nighttime primary service would be afforded to some population during these hours, and a first local service would be afforded to more than 900 communities in the nation, extensive 'white areas', in which the population would lose all nighttime primary service would be created. On virtually all of the clear channels all secondary service would be destroyed. Because of this destruction of secondary service (the only service received by some 20,000,000 persons in about one-half of the area in the United States) and vast impairment of primary service during the hours involved, service to rural areas would be lost. \* \* \*"

proposal failed "to accord with the statutory standards governing radio broadcast services". Thereafter, the Inquiry herein was instituted simultaneously with a denial in part and dismissal in part (FCC 59-10) of the petitioner's request for reconsideration of that action. The petitioner's request for reconsideration had also requested, as an alternative to the earlier petition, the licensing of daytime stations to operate during such nighttime hours as may occur between 6:00 a.m. and 6:00 p.m., the time segments considered herein.

3. Under the Communications Act of 1934, as amended, the Commission may, with certain exceptions not relevant here, grant licenses only upon written applications which are required to set forth, among other things, the hours of the day during which it is proposed to operate the station. Each initial license granted for a station and each renewal of license which is granted specifies the hours during which the station is authorized to operate and the hours so specified, with the exception of certain provisions of the existing rules as discussed below, are the maximum hours during which any station may be operated under its license. In accordance with § 3.23 of the rules, standard broadcast applications may now be filed and stations may be licensed for various hours of operation which include:

(1) Specified hours which permits operation during the exact hours specified in the license;

(2) Sharing time, which permits operation during the hours shared with one or more other stations using the same channel;

(3) Daytime, which permits operation during the hours between average monthly local sunrise and sunset;

(4) Limited time which permits operation during daytime and until local sunset if located west of the dominant station on the channel, or if located east thereof, until sunset at the dominant station and, in addition, during nighttime hours if not in use by the dominant station or stations on the channel; and

(5) Unlimited time, which permits operation without a maximum limit as to time.

4. Prior to April 13, 1940, the rules and regulations for the licensing of broadcasting stations (section 84) which had first been promulgated by the Federal Radio Commission<sup>3</sup> defined the term daytime as the period of time between 6:00 a.m. and local sunset. Thus the rules then provided that the broadcast day for daytime stations began at 6:00 a.m. However, during the winter months, this was considerably prior to local sunrise, causing rather serious interference due to nighttime propagation conditions prevailing, while during the summer months sunrise occurred considerably before 6:00 a.m. This rule was amended on April 13, 1940 (5 F.R. 1449),

<sup>3</sup>The rules which had been issued by the Federal Radio Commission were continued in effect by section 604 of the Communications Act of 1934, as amended until modified, terminated, superseded, or repealed by the Commission or by operation of law.

to specify local sunrise in place of 6:00 a.m. However, § 3.87 of the rules adopted June 10, 1940, contains provisions which permit program transmissions prior to local sunrise, beginning at 4:00 a.m. local standard time by daytime stations, except certain Class II stations, with their authorized daytime facilities where such operation does not cause undue interference. See *Music Broadcasting Company v. Federal Communications Commission*, 95 U.S. app. D.C. 12, 217 F. (2d) 339, 11 Pike & Fischer R.R. 2025 (1954); and *In re Music Broadcasting Company, et al.*, 15 Pike & Fischer R.R. 547.

5. The differences in station interference between daytime and nighttime operation are well recognized, and comprehensive reference has been made thereto in the Notice of Inquiry. Briefly, and of greatest import here, skywave service and interfering signals are propagated over great distances respectively, at night on the clear and shared standard broadcast channels, as distinguished from the essential absence thereof during most daytime hours of the solar diurnal arc. This fundamental difference in natural radio conditions is an appropriate consideration in carrying out the provisions of the Communications Act which provide for efficient, fair, and equitable distribution of radio service.

6. The Notice of Inquiry stated with respect to the increasing number of daytime stations:

The licensing of daytime stations has increased from 84 in 1946 to approximately 1,400 in 1958. Approximately 650 applications seeking daytime facilities are pending, ranging in power up to 50 kw. In addition, more than 350 applications for unlimited time operation are pending which propose, by use of directional antennas and reduced power, the avoidance of transmissions of interfering skywave signals during non-daytime hours. The filing of both kinds of applications is continuing at a substantial rate.

and:

All parties are hereby placed on notice that the Commission in its deliberations on this matter will take into consideration the applications for new daytime and fulltime station.

The number of standard broadcast stations authorized as of March 1, 1959, listed by type of channel and hours of operation, is shown in the attached Appendix II.<sup>3a</sup>

7. Substantial engineering data were filed showing the service gains and losses. Much of the data have been tabulated and are attached as Appendix I.<sup>4</sup> It shows that, if all present daytime stations were to extend their hours of operation from 6:00 a.m. to 6:00 p.m. there would be substantial losses of existing groundwave services, new white

<sup>3a</sup> Appendix II filed with the original document.

<sup>4</sup>Data filed in other FCC proceedings, Docket Nos. 6741 and 12274 and in the standard broadcast station license files are also considered relevant and reliance has been placed thereon to the extent such data is either set forth herein or in the decision in Docket No. 12274. Appendix I filed with the original document.

areas<sup>5</sup> would be created in the vicinity of communities which are now served by unlimited time stations on the same frequencies, the resulting service areas of the daytime stations would be meager, and skywave service would be lost. While the losses would be most severe in rural and small urban communities a substantial number of regional stations would not even serve the entire community to which they are licensed. The effects of "6 to 6" operation do not differ appreciably, during the time segments involved, from the 5:00 a.m. to 7:00 p.m. operation considered in Docket No. 12274.

8. It is shown by the data that the interference to the present service would not terminate at 6 o'clock except for areas in the Pacific standard time zone even though the interfering stations ceased their operation at 6 o'clock local standard time.<sup>5a</sup> This results from the time zone changes whereby 6 o'clock in the Central Time Zone is 7 o'clock Eastern Standard Time; 6 o'clock in the Mountain Time Zone is 8 o'clock Eastern Standard Time and 7 o'clock Central Standard Time; and 6 o'clock in the Pacific Time Zone is 9 o'clock Eastern Standard Time, 8 o'clock Central Standard Time, and 7 o'clock Mountain Standard Time. Thus, a station operating until 6 o'clock in the Pacific Standard Time Zone would transmit skywave interfering signals which would endure until 6 o'clock, 7 o'clock, 8 o'clock, or 9 o'clock, local time, depending upon the location of the service areas affected. Considering the operation of interfering stations in each time zone, the duration of interference to existing service would thus extend from local sunset to 9 p.m. Eastern Time, 8 p.m. Central Time, 7 p.m. Mountain Time and 6 p.m. Pacific Time. The correlate of this sequence would occur during the pre-sunrise morning hours, beginning at 3 a.m. Pacific Time.

9. Data currently available are necessarily confined to interference resulting from the operation of existing stations. The prospective effects are necessarily somewhat speculative. The rate of increase of daytime stations and applications clearly shows a strong continuing demand and in addition the eventual lifting of the freeze will undoubtedly accelerate the filing of daytime applications. It thus appears, based on present licensing and reasonable expectancy of future development, that until 9 p.m. Eastern Standard Time all skywave service would be entirely destroyed<sup>6</sup> and

<sup>5</sup>The time nighttime "white areas" is used to describe those areas receiving only skywave service with no groundwave service from any station during nighttime hours.

<sup>5a</sup>The transmission of skywave interfering signals from operations after local sunrise and before local sunset is considered in Docket No. 8333, The Daytime Skywave Proceeding.

<sup>6</sup>Skywave service attaches as an incident of the urban economic support of stations which are so protected from interference as to render broadcasting service over extensive areas by means of skywave signals, and is the only nighttime standard broadcast service available to 25,631,000 persons, in 1,727,-

groundwave service severely limited on most of the 107 standard broadcast channels. (Only the six local channels would be unaffected.)

10. The views and opinions expressed in the proceedings are substantially similar to those expressed earlier in Docket No. 12274. The Daytime Broadcasters Association, however, now urges "That the Commission—on an interim and experimental basis—authorize the operation of daytime only stations from 6 a.m. or local sunrise (whichever is earlier) to 6 p.m. or local sunset (whichever is later) for a period of two years." In support it is urged that the basic problem may be in this manner be resolved "not by theoretical data but by the actual results". No reason appears, however, to question the accuracy of the physical and engineering data on which the Commission's rules are based, and no further showing has been made to bolster the views expressed earlier that additional hours should be granted daytime stations on the basis of present need for local service despite the resulting interference.

11. Other parties commenting have made the point that the specified hours of operation now provided by § 3.23 of the rules are not delimited to the daytime or nighttime hours. Thus applications filed under the existing rules may propose operation from 6 a.m. to 6 p.m. It is urged that the present rules are thus entirely adequate for the determination on a case by case basis of the merits of any application proposing operation during these hours. The Commission could in this manner appropriately evaluate the extent of the service proposed and the interference which may be caused. This, it is asserted, is necessary in any event in view of the fact that the merits of the present daytime operations have been evaluated solely under daytime transmission conditions with no other evaluation to meet the statutory tests for licensing.<sup>6a</sup>

12. The Notice of Inquiry stated:

In the pleadings and comments filed heretofore in Docket No. 12274, DBA and other advocates of extended hours for daytime stations have asserted that there is a large unsatisfied need for local service during pre-sunrise and post-sunset hours. Of particular significance, states DBA, is the fact that in the United States 913 communities, with a total population of more than 7,300,000, have available to them no locally licensed radio outlet other than daytime-only stations.

000 square miles, who do not receive nighttime groundwave service from any station. This area comprises somewhat more than half the land area of the United States (excluding Alaska and Hawaii). The basic cause for the absence of groundwave service in these areas is the nighttime inter-station interference which is encountered on the shared channels despite the following of engineering principles of allocation which include the use of directional antennas designed to minimize interference.

<sup>6a</sup>It would be necessary that proposals for nighttime operation be evaluated under the rules and standards applicable for determination of nighttime service and interference.

13. With further reference to the communities referred to in the Notice of Inquiry, one party filing comments supplied additional data secured through a more detailed study of the records publicly available which show that the problem concerning adequacy of nighttime radio service to the people residing in these communities is not so severe as might appear from a more cursory examination. The detailed data show that a count of the communities listed totals 912; that 357 or 39.1 percent with a population total of 1,761,622 do not receive nighttime groundwave service from any stations; that 218 or 23.9 percent with a population total of 1,684,026 receive nighttime groundwave service from one station; that 337 or 37 percent with a population total of 5,218,854 receive nighttime groundwave service from two or more stations; and that many of the communities are nearby suburbs of well-served metropolitan areas.

14. As there is no practicable basis for increasing the number of standard broadcast channels, the only way in which more stations could be accommodated to provide additional services during the additional hours would be to increase the number of stations on these channels or by extending the hours of existing daytime stations. Under the Communications Act, however, and in principle it is clear that such should not be done at the expense of the broadcasting services now being effectively rendered during these hours, which would result in a severe loss of broadcasting service to the public. This is not to say, of course, that local nighttime operation might not be licensed in various of these communities were applications to be filed proposing operation which meets the appropriate criteria with reference to interference and other considerations whereby the Commission might find that the nighttime operations proposed could serve the public interest or could better serve the public interest than would other pending proposals.<sup>7</sup>

15. The Notice of Inquiry posed the consideration:

Would it be feasible for daytime stations, if operating after sunset, to reduce power sufficiently at sunset and before sunrise to limit interference to other stations to the daytime level? If so, how much service would be provided with such reduced radiation?

The data, however, show that in the main the resulting interference would preclude the affording of a satisfactory

<sup>7</sup>It may be pointed out also that any complaints that existing fulltime stations have failed to devote a reasonable amount of broadcast time to meeting the needs of the areas and communities which now receive broadcast service from these licensees will be carefully considered by the Commission in connection with renewal proceedings relating to such stations. Under the Communications Act of 1934, as amended, standard broadcast stations are licensed for a term of three years and renewal of such licenses may be granted from time to time for a term not to exceed three years. In each instance the Commission grants the license only upon finding that the operation meets the statutory standard of public interest, convenience, or necessity.

measure of service by daytime stations if operating after sunset even with no reduction in power. Any substantial reduction in power during these hours designed to reduce the degree of the interference which would be caused to the groundwave service of unlimited time stations would further diminish the coverage of the daytime stations. The greater susceptibility of skywave service to interference and the great distances to which such service extends in the absence of interference makes exceedingly problematical any benefits which might be secured by skywave service through power reduction by the interfering stations. Thus it appears that power reduction poses only an extremely limited potential for alleviating the interference problem. Moreover, under the existing rules, Class II, III and IV stations may be licensed to operate with power as low as 0.25 kilowatts, 0.5 kilowatts, and 0.1 kilowatts, respectively and, with the exception of the Class IV stations, these stations may make use of directional antennas for the reduction of interference by limiting radiation in certain directions, although permitting full radiation in other directions in order to provide maximum service. Thus the provisions of the present rules appear adequate in this respect.

16. With reference to the proposal set out in paragraph 10 above, that experimental operation should be authorized during the time segments here considered, for a period of two years, and the view expressed in support thereof that an asserted deficiency in the Commission's licensing of hours of operation of standard broadcast stations would thereby be corrected; we believe it appropriate to observe that somewhat similar arguments of deficiency in the applicability of the Commission's rules and engineering standards for the licensing of stations<sup>8</sup> have been made by some parties in other proceedings with reference both to the hours during the sun's nocturnal arc with which this proceeding is concerned and to other time segments of the broadcast day, and these arguments have been or will be ruled upon in those proceedings. Finally, we believe it appropriate to observe, in view of the broad and widespread nature of the suggestion which has been made for experimental operation, that in those cases where experimentation may be warranted and desirable, for reasons not

<sup>8</sup>It is the intent and purpose of the rules and standards to provide, with due consideration of all the factors involved and of their complexity, criteria which can be generally applied under the Communications Act to proposed station assignments to determine their acceptability or non-acceptability for licensing in terms of acceptable or non-acceptable interference. As in the case of many other fields in which statistical methods are employed, the applicable interference criteria have resulted from a statistical analysis of a large number of recorded field intensity measurements accumulated over substantial periods of time. These criteria have been the subject of review from time to time to assure consonance with all scientific principles and all other known factors which may have a bearing on the licensing of broadcast stations.

present here, the experimentation should be appropriately limited in scope and duration and so pointed in purpose as to secure the desired data with a minimum of disruption of the existing radio services which are otherwise in the public interest. We believe the general and universal basis for experimental operation suggested here fails also to meet that standard.

17. In the issues pointing out a number of problems involved, in the Notice of Inquiry, several issues were designed to solicit meaningful consideration in certain areas which would be brought into focus only in the event that it should otherwise appear some extended hours of operation would be meritorious. Examples of these are the effects upon the CONELRAD operation, upon the development of FM broadcasting, and upon the operations of stations in other North American countries. These and other similar issues require no resolution in view of our decision herein.

18. The Notice of Inquiry posed for consideration:

(a) What effect would the new services gained have on reception of needed and valuable programs by persons who are advantaged by such reception, including emergency and weather information, farm information, national and local news, programs and announcements concerning local affairs and local organizations?

(b) What effect would the limitation of service through destructive interference have upon access to events of national and regional interest and to programs of a type which cannot be originated by local communities, and other needed and valuable transmissions now available under the existing allocation rules?

19. Upon a careful review of the comments which have been filed, and a review of our decision in Docket No. 12274, we conclude that the losses of standard broadcast radio service, both groundwave and skywave in the various areas affected, which would result from an extension of the hours of operation of stations licensed for daytime operation must be determinative herein. We are unable to find an expression of any local need which is impossible of substantial fulfillment under existing rules for station licensing<sup>19</sup> and which is so great or so pressing as to warrant widespread disruption of the existing radio service now enjoyed thereunder and relied upon daily by millions of citizens. Particularly, would it be undesirable and unwarranted to permit

<sup>19</sup> We expressed the view in the Report and Order in Docket No. 12274 (Par. 49) that the needs and advantages relating to programming were common to all radio service, and that "any change in allocation rules which results in degradation of overall radio service results in less meeting of the various needs and provides for less of the advantages than at present". We adhere to that view on the basis of the record made in that proceeding. But we wish to permit the presentation of any special facts as to the value of the programming of certain stations or kinds of stations which may be available; and accordingly we are including this among the issues herein. Data supplied along this line, as in other connections, should be specific and factual, rather than general and conclusory.

<sup>20</sup> We here consider existing stations and prospective licensing of new stations.

such disruption in those instances where the result as shown by the data would simply be the taking of regular service from rural farm areas and from small urban communities, which need radio vitally, and giving more stations—serving less area—to city and principal urban areas which are already relatively well supplied not only with standard broadcast radio programs but with other facilities for relaxation, intellectual stimulus, information and recreation. Moreover, this conclusion is strongly reinforced by a comparison of the 1,761,622 persons in 357 communities, now receiving only skywave service, who would gain in lieu thereof a local groundwave service, with the 25,631,000 persons in 1,727,000 square miles, now receiving skywave service, who would lose entirely the standard broadcast radio service now available to them.

20. On the basis of the data now available we find that there is no warrant for inaugurating rule making looking toward extended hours for daytime stations on a general or universal basis and we conclude that the Inquiry herein should be, and it is hereby terminated.

Adopted: July 8, 1959.

Released: July 8, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-5801; Filed, July 13, 1959; 8:50 a.m.]

[Docket Nos. 12895, 12896; FCC 59M-870]

**BUCKLEY-JAEGER BROADCASTING CORP. AND WHDH, INC.**

**Order Scheduling Prehearing Conference**

In re applications of Buckley-Jaeger Broadcasting Corporation, Providence, Rhode Island, Docket No. 12895, File No. BPH-2552; WHDH, Inc., Boston, Massachusetts, Docket No. 12896, File No. BPH-2575; for construction permits for FM broadcast stations.

*It is ordered*, This 6th day of July 1959, that a prehearing conference, in accordance with § 1.111 of the rules, will be held in the above-entitled matter at 9:30 a.m. on Wednesday, July 15, 1959, in the offices of the Commission, Washington, D.C.

Released: July 7, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-5802; Filed, July 13, 1959; 8:50 a.m.]

[Docket No. 12934; FCC 59M-877]

**CLEARWATER BROADCASTING CORP. (WDCL)**

**Order Scheduling Hearing**

In re application of Clearwater Broadcasting Corporation (WDCL), Tarpon

Springs, Florida, Docket No. 12934, File No. BML-1746; for modification of license.

*It is ordered*, This 6th day of July 1959, that J. D. Bond will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on September 28, 1959, in Washington, D.C.

Released: July 8, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-5803; Filed, July 13, 1959; 8:50 a.m.]

[Docket Nos. 12854, 12855; FCC 59M-875]

**GOLETA BROADCASTING ASSOCIATES ET AL.**

**Order Continuing Hearing Conference**

In re applications of Thomas J. Davis, Jr. and Robert Sherman d/b as Goleta Broadcasting Associates, Goleta, California, Docket No. 12854, File No. BP-12044; Bert Williamson and Lester W. Spillane, a co-partnership, Santa Barbara, California, Docket No. 12855, File No. BP-12154, for construction permits.

The Hearing Examiner having under consideration a petition filed on July 7, 1959, by Bert Williamson and Lester W. Spillane, a co-partnership, requesting that the prehearing conference in the above-entitled proceeding presently scheduled for July 8, 1959, be continued to July 28, 1959;

It appearing, that counsel for the other parties to this proceeding have informally agreed to a waiver of the four-day requirement of § 1.43 of the Commission's rules and consented to a grant of the instant petition;

*It is ordered*, This 8th day of July 1959, that the petition be and it is hereby granted; and the prehearing conference in the above-entitled proceeding be and it is hereby continued to July 28, 1959, at 10 a.m., in Washington, D.C.

Released: July 8, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-5804; Filed, July 13, 1959; 8:50 a.m.]

[Docket No. 12824; FCC 59M-880]

**INTER-CITIES BROADCASTING CO.**

**Order**

In re application of Theodore A. Kolasa, Henry J. Kolasa, Mitchell A. Kolasa and Alphonse R. Deresz, d/b as Inter-Cities Broadcasting Company, Livonia, Michigan, Docket No. 12824, File No. BP-10991; for construction permit for a new standard broadcast station.

*It is ordered*, This 7th day of July 1959, that the "Petition of Inter-Cities Broadcasting Company for Change of Certain

Dates" filed July 2, 1959, is, without objection from any other party, granted; and the following changes in dates governing future steps in this proceeding are herewith effected:

From—	To—	For—
July 13, 1959	July 27, 1959	Inter-Cities Broadcasting Company's direct written presentation to be furnished other parties and the Examiner.
July 20, 1959	Aug. 3, 1959	Informal Engineering Conference.
Aug. 10, 1959	Aug. 14, 1959	In the event Station W.G.A.R. proposes to make rebuttal showing, that showing will be reduced to writing and copies furnished to other parties and to the Examiner.

Released: July 8, 1959.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] MARY JANE MORRIS,  
Secretary.

[F.R. Doc. 59-5805; Filed, July 13, 1959;  
8:50 a.m.]

[Docket Nos. 12654, 12935; FCC 59M-879]

#### OLD BELT BROADCASTING CORP. (WJWS) AND PATRICK HENRY BROADCASTING CORP. (WHEE)

##### Order Scheduling Hearing

In re applications of Old Belt Broadcasting Corporation (WJWS), South Hill, Virginia, Docket No. 12654, File No. BP-11412; Patrick Henry Broadcasting Corporation (WHEE), Martinsville, Virginia, Docket No. 12935, File No. BP-11416; for construction permits.

*It is ordered*, This 6th day of July 1959, that Millard F. French will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on September 28, 1959, in Washington, D.C.

Released: July 8, 1959.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] MARY JANE MORRIS,  
Secretary.

[F.R. Doc. 59-5806; Filed, July 13, 1959;  
8:50 a.m.]

[Docket No. 12695; FCC 59M-873]

#### RADIO MISSOURI CORP. (WAMV)

##### Order Scheduling Prehearing Conference

In re application of Radio Missouri Corporation (WAMV), East St. Louis, Illinois, Docket No. 12695, File No. BP-12193; for construction permit.

The Hearing Examiner having under consideration the above-entitled proceeding;

*It is ordered*, This 7th day of July 1959, that all parties, or their attorneys, who

desire to participate in the proceeding, are directed to appear for a further prehearing conference, pursuant to the provisions of § 1.111 of the Commission's rules, at the Commission's offices in Washington, D.C., at 2:00 p.m., July 22, 1959.

Released: July 8, 1959.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] MARY JANE MORRIS,  
Secretary.

[F.R. Doc. 59-5807; Filed, July 13, 1959;  
8:50 a.m.]

[Docket No. 12209 etc.; FCC 59M-878]

#### DAVID M. SEGAL ET AL.

##### Order Continuing Hearing

In re applications of David M. Segal, Boulder, Colorado, Docket No. 12209, File No. BP-10427, Clifford W. Paine & William John Hyland, III, d/b as Denver Broadcasting Company, Denver, Colorado, Docket No. 12833, File No. BP-11791; John L. Buchanan, tr/as Satellite Center Radio Company, Arvada, Colorado, Docket No. 12884, File No. BP-12514; for construction permits.

A prehearing conference in the above-entitled matter having been held on July 7, 1959, and it appearing from the record made therein that certain agreements were reached which properly should be formalized in an Order:

*It is ordered*, This 7th day of July 1959 that:

(1) The direct cases of the applicants shall be presented by written, sworn exhibits;

(2) Preliminary drafts of the applicants' technical engineering exhibits shall be exchanged among the parties on September 15, 1959;

(3) The written sworn exhibits constituting the direct cases of the applicants shall be exchanged among the parties and copies thereof supplied the Hearing Examiner on November 1, 1959, at which time, other than for corrective matters, the affirmative cases shall be deemed frozen;

(4) The hearing shall convene at 10:00 a.m. on November 16, 1959 for the presentation of the direct written cases into evidence and the notification of witnesses to be called for cross-examination;

(5) The calling of witnesses for cross-examination shall commence on December 1 1959;

*It is further ordered*, That the hearing in this matter presently scheduled to commence on July 28, 1959, is continued to November 16, 1959, commencing at 10:00 a.m. in the offices of the Commission in Washington, D.C.

Released: July 8, 1959.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] MARY JANE MORRIS,  
Secretary.

[F.R. Doc. 59-5808; Filed, July 13, 1959;  
8:51 a.m.]

[Docket No. 12651 etc.; FCC 59M-874]

#### JAMES E. WALLEY ET AL.

##### Order Setting Prehearing Conference

In re applications of James E. Walley, Oroville, California, Docket No. 12651, File No. BP-11655; Robert L. Stoddard, tr/as Sierra Broadcasting Company (KATO)- Reno, Nevada, Docket No. 12819, File No. BP-12299; Finley Broadcasting Company (KSRO), Santa Rosa, California, Docket No. 12820, File No. BP-12313; Gene V. Mitchell and Robert T. McVay, d/b as Sanval Broadcasters, Oroville California, Docket No. 12821, File No. BP-12381; for construction permits for standard broadcast stations.

*It is ordered*, This 7th day of July 1959, that all parties, or their counsel, in the above-entitled proceeding are directed to appear for a prehearing conference pursuant to the provisions of § 1.111 of the Commission's rules, at the offices of the Commission in Washington, D.C. at 10 o'clock a.m., July 17, 1959, for the purpose of considering the following:

(1) The necessity or desirability of simplification, clarification, amplification, or limitation of the issues;

(2) The possibility of stipulating with respect to facts;

(3) The procedure at the hearing;

(4) The limitation of the number of witnesses;

(5) Such other matters as will be conducive to an expeditious conduct of the hearing.

Released: July 8, 1959.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] MARY JANE MORRIS,  
Secretary.

[F.R. Doc. 59-5809; Filed, July 13, 1959;  
8:51 a.m.]

## FEDERAL POWER COMMISSION

[Docket Nos. G-17194 and G-17216]

#### GRAHAM-MICHAELIS DRILLING CO. Notice of Applications and Date of Hearing

JULY 7, 1959.

Take notice that on December 4, 1958, in Docket No. G-17194, and on December 8, 1958, in Docket No. G-17216, Graham-Michaelis Drilling Company (Applicant) filed applications pursuant to section 7 (b) of the Natural Gas Act for permission and approval to abandon natural gas service to Colorado Interstate Gas Company (Colorado Interstate) as follows:

(1) In Docket No. G-17194, from the Gilstrap No. 1 and Davis No. 1 Units located in the Hugoton Gas Field, Haskell County, Kansas, covered by a gas sales contract dated February 2, 1953, between Cities Service Oil Company (Cities Service), Applicant's predecessor in interest, and American Gas Production Company, as sellers, and Colorado Interstate, as buyer, on file as Graham-Michaelis Drilling Company (Operator),

et al., FPC Gas Rate Schedule No. 9; and

(2) In Docket No. G-17216, from the Emmons No. 1 Unit, also located in the Hugoton Gas Field, Haskell County, Kansas, covered by a gas sales contract dated March 9, 1955, as amended, between Michaelis Drilling Company (Michaelis) et al., as seller, and Colorado Interstate, as buyer, now on file as Graham-Michaelis Drilling Company (Operator), et al., FPC Gas Rate Schedule No. 7.

Michaelis (predecessor of Applicant) was authorized on January 24, 1956, in Docket No. G-9180, and on October 16, 1956, in Docket No. G-9388, to sell gas to Colorado Interstate from the aforementioned units, among others, a portion of which services are proposed to be abandoned in Docket Nos. G-17194 and G-17216, respectively.

Applicant states that the subject unit wells are no longer capable of producing gas in commercial quantities.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on August 11, 1959, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications: *Provided, however*, that the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before July 28, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and con-

currence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,  
*Acting Secretary.*

[F.R. Doc. 59-5771; Filed, July 13, 1959; 8:45 a.m.]

## INTERSTATE COMMERCE COMMISSION

### ORGANIZATION OF DIVISIONS AND WORKS AND ASSIGNMENT OF WORK, BUSINESS AND FUNCTIONS

#### Miscellaneous Amendments

JUNE 16, 1959.

The Organization Minutes of the Interstate Commerce Commission relating to the organization of divisions and boards and assignment of work, business and functions of the Interstate Commerce Commission, pursuant to section 17 of the Interstate Commerce Act as amended, revised to January 1, 1959 (24 F.R. 2506 and 24 F.R. 4070), have been amended in the following particulars:

The membership of Division 4 appearing in the section entitled *Divisions* on the first page of the text has been changed as stated below:

Division Four—Commissioners Anthony F Arpaia (Chairman) Laurence K. Walrath and Abe McGregor Goff.

Item 9.6 *Finance* has been amended in the column headed "Reports to the Commission or appropriate division through" by substituting "Comr. Arpaia" for "Comr. Mitchell"

[SEAL] HAROLD D. MCCOY,  
*Secretary.*

[F.R. Doc. 59-5795; Filed, July 13, 1959; 8:49 a.m.]

[Rev. S.O. 562, Taylor's I.C.C. Order 102-A]

### ST. JOHNSBURY & LAMOILLE COUNTY RAILROAD

#### Retrouting Traffic; Vacation of Order

To all railroads: Upon further consideration of Taylor's I.C.C. Order No. 102 and good cause appearing therefor:

*It is ordered, That:*

(a) Taylor's I.C.C. Order No. 102, be, and it is hereby vacated and set aside.

(b) Effective date: This order shall become effective at 11:59 p.m., July 6, 1959.

*It is further ordered, That* this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., July 6, 1959.

INTERSTATE COMMERCE COMMISSION,  
CHARLES W TAYLOR,  
*Agent.*

[F.R. Doc. 59-5785; Filed, July 13, 1959; 8:47 a.m.]

## GENERAL SERVICES ADMINISTRATION

### Public Buildings Service

[Wildlife Order 54]

### TRANSFER OF PROPERTY KNOWN AS CLEGHORN SPRINGS (F-SD-444) PENNINGTON COUNTY, SOUTH DAKOTA

Pursuant to the authority granted under Public Law 537, approved May 19, 1948, Eightieth Congress (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the United States of America, dated June 2, 1959, that property known as Cleghorn Springs, Pennington County, South Dakota, and more particularly described in said deed, has been transferred from the United States to the State of South Dakota.

2. The above-described property was transferred to the State of South Dakota for wildlife conservation purposes (other than migratory birds) in accordance with the provisions of Public Law 537.

Dated: July 6, 1959.

LAWSON B. KNOTT, JR.,  
*Acting Commissioner*  
*Public Buildings Service.*

[F.R. Doc. 59-5772; Filed, July 13, 1959; 8:45 a.m.]

## CUMULATIVE CODIFICATION GUIDE—JULY

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